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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 2,390,988

For the mark SPORTSMAN’S WAREHOUSE HUNTING FISHING CAMPING RELOADING
OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C)	
)	
v.)	Cancellation No. 92045000
Sportsman’s Warehouse, Inc.)	

PETITIONER’S CASE BRIEF

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I. IDENTIFICATION OF PARTIES AND NATURE AND STATUS OF CASE

Cancellation Petitioner Bass Pro Trademarks, L.L.C. (“Petitioner” or “Bass Pro”) respectfully submits Petitioner’s Case Brief in this matter, wherein Petitioner seeks cancellation of Respondent Sportsman’s Warehouse, Inc.’s (“Respondent”) Registration No. 2,390,988 for the mark SPORTSMAN’S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design. Petitioner’s brief is being provided after the close of all testimony periods in this proceeding in order to advise the Board of the relevant legal issues and the relevant statutory authority and case law relied upon by Petitioner in this matter.

II. DESCRIPTION OF THE RECORD

The evidence of record consists of:

- (1) Bass Pro’s Registration No. 2,071,417
- (2) Respondent’s Registration No. 2,390,988
- (3) Respondent’s Answers to Petitioner’s Interrogatories
- (4) Petitioner’s Responses to Registrant’s Interrogatories
- (5) Application Serial Number 75/411,966 documents contained in the prosecution history of Respondent’s Registration No. 2,390,988
- (6) The discovery deposition of William Bome, taken May 16, 2006
- (7) The discovery deposition of Joel Michael McRae, taken May 16, 2006
- (8) The discovery deposition of Jason Perez, taken May 16, 2006
- (9) The discovery deposition of Dale Smith, taken May 10, 2006
- (10) The discovery deposition of Stuart Utgaard, taken May 11, 2006
- (11) The discovery deposition of Jamison Bryan Hensley, taken June 1, 2006
- (12) The discovery deposition of James Osborne, taken June 1, 2006

- (13) The discovery deposition of Paul Otte, taken June 2, 2006
- (14) The testimony deposition of Toni Miller, taken January 23, 2007
- (15) The testimony deposition of Stanley W. Lippelman, taken January 23, 2007
- (16) The testimony deposition of Haden Holley, taken January 23, 2007
- (17) The expert report and testimony deposition of Michael B. Mazis, Ph.D., taken December 1, 2006
- (18) A Bass Pro advertisement reflecting early use of its mark

III. FACTS

This action is a trademark cancellation proceeding, brought pursuant to 15 USC § 1064. *See* Exh. 1, Bass Pro's Amended Petition. Bass Pro is the owner of U.S. Trademark Registration No. 2,071,417 for the mark BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and Design which was registered on the Principal Register on June 17, 1997. *See* Exh. 2, Bass Pro's Registration No. 2,071,417. Said registration was based on an application filed in the U.S. Patent and Trademark Office ("USPTO") on March 1, 1996—a date prior to the filing of Respondent's mark that is being contested in this proceeding. *Id*; Exh. 3, Respondent's Registration No. 2,390,988. Bass Pro's registered mark is valid and subsisting and is prima facie evidence of Bass Pro's exclusive right to use said mark in commerce on the services specified in its registration, namely "retail stores featuring clothing, fishing supplies and sporting goods."

Since at least as early as January 2, 1995, Bass Pro has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. *See* Exh. 3, Respondent's Registration No. 2,390,988; Exh. 17, Trial Testimony Deposition of Toni Miller¹, p. 11, line 7 – p. 13, line 23. Bass Pro's use of its SPORTSMAN'S WAREHOUSE mark has

been valid and continuous since its date of first use and has not been abandoned. *See* Exh. 18, Trial Testimony Deposition of Stan Lippelman², p. 16, line 6 – p. 24, line 8; Exh. 17, Trial Testimony Deposition of Toni Miller, p. 10, lines 13 – 25. Moreover, Bass Pro's use of this mark began on a date prior to the date of filing of Respondent's application for the mark contested in this matter. *See* Exh. 3, Respondent's Registration No. 2,390,988 (showing filing date of January 22, 1999). Bass Pro's SPORTSMAN'S WAREHOUSE mark is symbolic of extensive good will and consumer recognition built up by Bass Pro through substantial amounts of time and effort in advertising and promotion.

On January 22, 1999, Respondent filed an application with the USPTO, seeking registration of the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design. *See* Exh. 8, Respondent's Application Serial No. 75/411,966. Respondent's application alleged Respondent's use of its SPORTSMAN'S WAREHOUSE and Design mark since June 16, 1995, in connection with "[r]etail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear." *Id.* This application led to the registration of Respondent's mark, as shown below, effective October 3, 2000. *See* Exh. 3, Respondent's Registration No. 2,390,988.



¹ Toni Miller is the current Vice President and Chief Financial Officer for Bass Pro. *See* Exh. 17, Trial Testimony Deposition of Toni Miller, p. 7, lines 17-25.

² Stan Lippelman is Bass Pro's Vice President of Marketing. *See* Exh. 18, Trial Testimony Deposition of Stan Lippelman, p. 7, lines 18-25.

Respondent's registered mark, when used in connection with the services of Respondent, is comprised of a background design and terms that are merely descriptive of the services being provided and that are insufficiently stylized to be inherently distinctive to consumers in the markets served by Respondent. *See id.*

Prior to the issuance of Respondent's Registration No. 2,390,988, Respondent filed formal application papers under notice of 18 U.S.C. § 1001, stating that Respondent had used the SPORTSMANS' WAREHOUSE and Design mark since June 16, 1995, in connection with "[r]etail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear." *See* Exh. 8, Respondent's Application Serial No. 75/411,966. Respondent made this representation to the USPTO, despite knowing that Respondent has not at any time used the SPORTSMAN'S WAREHOUSE mark in any form in connection with wholesale stores—a fact that Respondent has admitted during discovery associated with the pending proceeding. *See*, Exh. 4, Respondent Sportsman's Warehouse, Inc.'s Answers to Petitioner's First Set of Interrogatories, Response to Interrogatory No. 8, p. 8; Exh. 9, Discovery Deposition of William Bome, p. 35, lines 7-16; Exh. 10, Discovery Deposition of Joel Michael McRae, p. 28, lines 11-16; Exh. 11, Discovery Deposition of Jason Perez, p. 26, lines 14-25; Exh. 16, Discovery Deposition of Paul Otte, p. 28, line 6 – p. 29, line 2.

IV. ISSUES AND QUESTIONS PRESENTED

(1) Is cancellation of Respondent's registration warranted under §2(d) of the Lanham Act, 15 U.S.C. § 1052(d), because Respondent's registration so resembles Bass Pro's prior registered mark and common law mark as to be likely to cause confusion, or to cause mistake or to deceive?

(2) Is cancellation of Respondent's registration warranted because Respondent's registration was fraudulently obtained?

V. ARGUMENT AND DISCUSSION

A. Cancellation Standard

The Lanham Act allows for cancellation of a Principal Register registration by anyone "who believes that he is or will be damaged . . . by the registration." 15 U.S.C. § 1064; *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000). The party seeking cancellation must prove two elements: (1) that it has standing; and (2) that there are valid grounds for canceling the registration. *See International Order of Job's Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 1091, 220 USPQ 1017, 1019 (Fed. Cir. 1984).

B. Cancellation Of Respondent's Registration Is Warranted

1. Bass Pro Has Standing to Cancel Respondent's Mark

Standing is the more liberal of the two elements a party seeking to cancel a trademark registration must prove. *See Cunningham*, 222 F.3d at 945. Standing requires only that the party seeking cancellation believes that it is likely to be damaged by the registration. *See Golden Gate Salami Co. v. Gulf States Paper Corp.*, 332 F.2d 184, 188, 141 USPQ 661, 664 (CCPA 1964) (finding standing, which requires only a belief in damage). A belief in damage can be shown by establishing a direct commercial interest. *See International Order*, 727 F.2d at 1092, 220 USPQ at 1020 (finding sufficient the petitioner's production and sale of merchandise bearing the registered mark). In *Cunningham*, 222 F.3d at 945, the Court held that the petitioner's prior trademark registrations and the products sold under petitioner's registered mark were sufficient to establish the petitioner's direct commercial interest and its standing to petition for cancellation of the contested registration. In light of Bass Pro's prior trademark registration, as well as its

offering of services, including those stated in Respondent's service mark registration, there can be no doubt that Bass Pro has standing to petition for cancellation of Respondent's registration.

2. There are Valid Grounds for Canceling Respondent's Mark

Establishing the second element required for cancellation, a valid ground for cancellation, is simplified if the registered mark has been on the Principal Register for less than five years. *See Cunningham*, 222 F.3d at 945. In such a case, any ground that would have prevented registration in the first place qualifies as a valid ground for cancellation. *See id* at 946. This is certainly the case here, as Petitioner initiated this cancellation proceeding prior to the five-year anniversary of Respondent's registration. *See* Exh. 23, Petition; Exh. 3, Respondent's Registration No. 2,390,988.

a. Respondent's Registration Should be Canceled Due to Likelihood of Confusion (§2(d) of the Lanham Act)

One such ground is § 2(d) of the Lanham Act, relating to likelihood of confusion between the mark sought to be canceled and a mark for which the party seeking cancellation can establish either prior use or prior registration. *See id*; *Golden Gate*, 332 F.2d at 188, 141 USPQ at 664; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1314, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003) ("Under § 2(d) of the Lanham Act, the PTO may refuse to register a trademark if it 'so resembles' a previously registered mark 'as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.'").

To establish priority, the petitioner must show proprietary rights in the mark that produce a likelihood of confusion. *See Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 1320, 209 USPQ 40, 43 (CCPA 1981). These proprietary rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights. *Id.*; *see also Nat'l*

Cable Television Ass'n, Inc. v. Am. Cinema Editors, Inc., 937 F.2d 1572, 1582, 19 USPQ2d 1424, 1429 (Fed. Cir. 1991). Bass Pro can establish priority because its filing date for its application for Registration No. 2,071,417 (March 1, 1996) precedes Respondent's filing date for its Registration No. 2,390,988 (January 22, 1999). Moreover, Bass Pro's first use of its SPORTSMAN'S WAREHOUSE registered mark and common law mark preceded Respondent's first use of its registered mark. *See* Trial Testimony Deposition of Toni Miller, p. 11, line 7 – p. 13, line 23 (establishing Bass Pro's use of its registered mark prior to March 1, 1995); *see also* Exh. 7, Petitioner's Responses to Registrant's Second Set of Interrogatories and Requests for Production of Documents, Response to Interrogatories 20 and 21, pp. 6-8. Respondent, admittedly, cannot establish use prior to June 16, 1995:

Q: Did you provide the law firm with the information that's shown on the registration, like the logo itself and the description of goods and the date of first use?

A: Dale Smith designed the logo, and the information on here on the date of first use is June 16th, 1995. I think at the time that that was the only ad that we could find, so that's why—that is the date of first use . . .

. . .

Q: At the time you signed Exhibit 14, were you aware of any earlier use of the mark?

A: Of which mark?

Q: The one that's shown in Exhibit 2.

A: Sure – I mean, earlier than December 16th, 1998?

Q: Earlier (sic) than June 16th, 1995.

A: Not in the—you know, we didn't have a newspaper thing, but we were using it on the side of the building for sure by then in terms of our sign on the old building that was out here.

Q: When was it used on the sign on the building?

A: Well, that's—we're trying to track that down, but we think it was February or March 2000—or 1995.

See Exh. 13, Discovery Deposition of Stuart Utgaard, p. 13, lines 1-9; p. 75, line 13 – p. 76, line 2; *see also* Exh. 12, Discovery Deposition of Dale Smith³, p. 19, line 25 – p. 20, line 13; p. 38, lines 4-11. Respondent's speculation regarding any use of its registered mark prior to June 16, 1995 falls far short of the clear and convincing evidence necessary to show a date of first use. *See Martahus v. Video Duplication Services*, 3 F.3d 417, 423 n.7, 27 USPQ2d 1846, 1852 n.7 (Fed. Cir. 1993) (where registrant alleged use prior to the date listed in its registration application as its date of first use, registrant had the burden of “establishing that use by clear and convincing evidence instead of a mere preponderance of the evidence.”). There simply is no evidence of record to establish Respondent's use of its registered mark prior to June 16, 1995.

The Federal Circuit and its predecessor, the Court of Customs and Patent Appeals, have set out the factors the Board considers in likelihood of confusion cases. *See In re Majestic Distilling Co.*, 315 F.3d at 1314-15, 65 USPQ2d at 1203; *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). Those factors are:

- (1) The similarity or dissimilarity of the marks in their entireties as to their appearance, sound, connotation, and commercial impression;
- (2) The similarity or dissimilarity and nature of the goods . . . described in an application or registration or in connection with which a prior mark is in use;
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels;
- (4) The conditions under which and buyers to whom sales are made, i.e., “impulse” vs. careful, sophisticated purchasing;
- (5) The fame of the prior mark;

³ Mr. Smith is currently Respondent's President. *See* Exh. 12, Discovery Deposition of Dale Smith, p. 3, lines 8-16.

- (6) The number and nature of similar marks in use on similar goods;
- (7) The nature and extent of any actual confusion;
- (8) The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion;
- (9) The variety of goods on which a mark is or is not used;
- (10) The market interface between the applicant and the owner of a prior mark;
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods;
- (12) The extent of potential confusion; and
- (13) Any other established fact probative of the effect of use.

See In re E.I. du Pont de Nemours & Co., 476 F.2d at 1361, 177 USPQ at 567. Not all of the *DuPont* factors may be relevant or of equal weight in a given case, and “any one of the factors may control a particular case.” *In re Dixie Restaurants*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). Applying the *DuPont* factors to this case favors a finding of a likelihood of confusion.

(1) Similarity of the Marks

In determining the similarity of marks, the Board must consider the marks in their entireties, words and design. *See In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993). In this case, Bass Pro's registered mark is the following:



See Exh. 2, Bass Pro's Registration No. 2,071,417.

Respondent's contested registered mark in this case is:



See, Exh. 3, Respondent's Registration No. 2,390,988. Although the above marks are not identical, the prominent word portions of the above marks, *i.e.*, the words "Sportsman's Warehouse," are identical, have the same connotation and give the same commercial impression. *See, e.g., Cunningham*, 222 F.3d at 947 (finding the marks "LASER" and "LASERSWING" likely to be confused and concluding that the addition of the word "SWING" was insufficient to distinguish the two marks because it is a descriptive component of the mark).

The background design and sub-text incorporated in Respondent's mark are at most merely descriptive of the services Respondent offers in conjunction with use of its mark, *i.e.*, "retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear," if not generic, and thus should be given little weight in determining whether or not a likelihood of confusion exists. *See Cunningham*, 222 F.3d at 947 ("the descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion"); *see, e.g., Herbko Intern., Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) ("Because the impact of the design in the overall commercial impression is minor when compared with the words, a consumer viewing Herbko's mark would attach greater significance to the words CROSSWORD COMPANION than to the crossword puzzle design. The words dominate the design feature."). Moreover, "the identity of words, connotation and commercial impression weighs heavily against the applicant" (Respondent in this case). *See In re Shell Oil*, 992 F.2d at 1206, 26 USPQ2d at 1688.

Likewise, Respondent's registered mark is also substantially similar to Bass Pro's common law SPORTSMAN'S WAREHOUSE mark. Bass Pro's SPORTSMAN'S WAREHOUSE word mark and the dominant word portion of Respondent's registered mark are identical, have the same connotation and give the same commercial impression. *See Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ 390, 395 (Fed. Cir. 1983). Because the differences in Respondent's design and its use of descriptive sub-text do not diminish the similarity between Bass Pro's SPORTSMAN'S WAREHOUSE mark and Respondent's registered mark, the marks are sufficiently similar to evidence a likelihood of confusion. *See id.*

It should also be noted that in cases such as this one, where the parties' respective services are virtually identical (as explained, *infra*), the degree of similarity necessary to support a likelihood of confusion declines. *See Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Therefore, given the fact that the words "Sportsman's Warehouse" dominate the parties' respective marks, and that the differences in the parties' respective marks do not diminish their substantial identity when viewed as a whole, the similarity of the marks weighs in favor of a finding of a likelihood of confusion.

(2) Similarity and Nature of Services

The Board must look to the registrations themselves to determine the scope of the goods/services covered by the contested mark. *See Cunningham*, 222 F.3d at 948 (citing *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987); *Dixie*, 105 F.3d at 1407-08, 41 USPQ2d at 1534; *Commerce Drug Co. v. Kirkman Labs., Inc.*, 461 F.2d 833, 835, 174 USPQ 265, 267 (CCPA 1972)).

Respondent's services are described in Respondent's registration as "retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear." *See* Exh. 3, Respondent's Registration No. 2,390,988. Bass Pro's registered mark, similarly, claims the use of its mark for the following services: "retail stores featuring clothing, fishing supplies and sporting goods." *See* Exh. 2, Bass Pro's Registration No. 2,071,417. Moreover, since its first use of its registered mark and its common law SPORTSMAN'S WAREHOUSE mark, Bass Pro has used these marks in conjunction with retail stores featuring consumer goods related to outdoor recreational activities, including, but not limited to, hunting, fishing, camping, hiking, boating and archery. *See* Exh. 5, Petitioner's Responses to Registrant's First Set of Interrogatories and Requests for Production of Documents, Responses to Interrogatories 1 and 2, pp. 5-7. It is clear that the parties' respective services are very closely related, if not practically identical. *See* Exh. 13, Discovery Deposition of Stuart Utgaard, p. 52, lines 2-7 (admitting Bass Pro and Respondent are competitors and sell similar products).

The fact that the parties' stated services offered in conjunction with their respective registered marks are sufficiently related, if not virtually identical, further evidences a likelihood of confusion. It should also be noted that this fact also causes the "degree of similarity" factor to militate in favor of a finding of likelihood of confusion. *See Century 21*, 970 F.2d at 877, 23 USPQ2d at 1701. ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.").

(3) Similarity of Trade Channels

Given the virtually identical nature of the services claimed in the respective parties' registrations, it is clear that there is substantial overlap in the channels of trade. Both parties specifically claim "retail stores" featuring, among other things, "clothing," "fishing supplies,"

hunting supplies, and camping supplies. *See* Exh. 2, Bass Pro's Registration No. 2,071,417; Exh. 3, Respondent's Registration No. 2,390,988. Accordingly, it is reasonable to presume that the purchasers and channels of trade would at least overlap. *See In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers."). Moreover, Respondent's Chief Executive, Stuart Utgaard, concedes that Bass Pro and Respondent are, in fact, competitors that sell similar products. *See* Exh. 13, Discovery Deposition of Stuart Utgaard, p. 52, lines 2-7.

Furthermore, Bass Pro and Respondent have begun operating their respective retail stores in the very same markets. *See* Exh. 15, Discovery Deposition of James Osborne, p. 28, line 12 – p. 29, line 1; p. 40, line 8 – p. 41, line 11 (confusion arose immediately upon opening of Respondent's store in Memphis, Tennessee); Exh. 16, Discovery Deposition of Paul Otte, p. 41, line 3 – p. 42, line 5 (confusion began within one month of the opening of Respondent's Memphis, Tennessee store). The current and future overlapping of the parties' respective markets confirms the similar nature of their trade channels; a similarity which will only increase as the parties continue to open new retail stores in the same markets.

(4) Conditions of Sale

The "discrimination and degree of care" by users of the respective services must be considered in determining likelihood of confusion, along with the other relevant factors, and given appropriate weight. *See Shell Oil*, 992 F.2d at 1208, 26 USPQ2d at 1690. "When the products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care." *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000).

The retail store services of both parties here, as described in their respective trademark registrations, reflect services associated with the sale of relatively low priced products by purchasers that are mostly impulse buyers. This fact was confirmed by several witnesses, such as Mr. Haden Holley, the General Manager for Bass Pro's SPORTSMAN'S WAREHOUSE retail store in Memphis, Tennessee:

Q: Does your store serve the same types of customers that are served by the Sportsman's Warehouse, Incorporated stores in the Memphis area?

A: I would say yes, of course.

Q: Okay. Do you track the average amount of money spent by customers at your store?

A: Yes. We—that's pretty much tracked on a daily and yearly basis, yes.

Q: Okay. And what is the typical average amount of money spent by customers when they visit your store?

A: For the past year roughly probably \$55 a person, something like that, per transaction.

Q: Okay. What about in 2005?

A: It probably—probably a little bit less than that.

See Exh. 19, Trial Testimony Deposition of Haden Holley, p. 14, lines 14-25 – p. 15, lines 1-4.

(5) Fame of Bass Pro's Mark

Although the fame of a registered mark is relevant to likelihood of confusion, there is no requirement that a mark be famous for there to be a finding of likelihood of confusion. *See In re Majestic*, 315 F.3d at 1317, 65 USPQ2d at 1205 (“Although we have previously held that the fame of a registered mark is relevant to likelihood of confusion, *DuPont*, 476 F.2d at 1361, 177 USPQ at 567 (factor five), we decline to establish the converse rule that likelihood of confusion is precluded by a registered mark's not being famous.”); *see also Cunningham*, 222 F.3d at 949,

(affirming the Board's cancellation of registered mark where the Board assumed that the prior mark was not famous). While the evidence of record may not establish the fame of Bass Pro's marks, this does not in any way preclude a finding of a likelihood of confusion.

(6) Number and Nature of Similar Marks

The sixth *DuPont* factor considers "the number of and nature of similar marks in use on similar goods." *Dupont*, 476 F.2d at 1361, 177 USPQ at 567. Evidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection. *See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (citations omitted). The probative value of third-party trademarks depends entirely upon their usage. *See id* (citing *Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167, 1173, 192 USPQ2d 289, 294 (2d Cir. 1976) ("The significance of third-party trademarks depends wholly upon their usage. Defendant introduced no evidence that these trademarks were actually used by third parties, that they were well promoted or that they were recognized by customers.")). Where the record includes no evidence about the actual nature or extent of third-party uses, the probative value of this evidence is thus minimal. *See Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1338 (Fed. Cir. 2001).

In this case, Respondent can proffer no evidence of third-party use of similar marks, other than Respondent's interrogatory response stating that Respondent was aware of a store on www.ebay.com selling goods under the name "Sportsman's Warehouse." Respondent further stated that it exchanged correspondence with a company that was attempting to file state business and/or corporate names including the words "Sportsman's Warehouse." *See* Exh. 3, Respondent Sportsman's Warehouse, Inc.'s Answers to Petitioner's First Set of Interrogatories, Response to Interrogatory No. 15, pp. 13-14. This scant "evidence" of third party use clearly falls far short of

that which would have any probative value as to the issue of likelihood of confusion. As the Federal Circuit Court of Appeals so aptly noted in *Palm Bay Imports*, 396 F.3d at 1374, 73 USPQ2d at 1694, “the purpose of a defendant introducing third party uses is to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different such marks on the bases of minute distinctions.” Because evidence of third-party use here fails to rise to the level of demonstrating that such third-party use is so widespread as to condition the consuming public, the strength of Bass Pro’s mark cannot be undermined by such evidence. *See id* (“substantial evidence supports the Board’s finding that the strength of [Petitioner’s] mark was not undermined by third-party use”).

(7) Actual Confusion

A showing of actual confusion is highly probative, if not conclusive, of a high likelihood of confusion. *See In re Majestic*, 315 F.3d at 1317, 65 USPQ2d at 1205. In fact, even a single instance of actual confusion has been sufficient to warrant a finding that the seventh *DuPont* factor weighs in favor of a finding of likelihood of confusion. *See Molenaar, Inc. v. Happy Toys, Inc.*, 188 USPQ 469 (TTAB 1975) (even a single instance of actual confusion is at least “illustrative of a situation showing how and why confusion is likely”).

In this case, numerous employees of Respondent encountered many instances of actual confusion:

Q: Are you aware of any instances where a customer has come into your store and expressed some confusion between your Sportsman’s Warehouse and the Bass Pro Shops Sportsman’s Warehouse?

A: I’ve experienced that before, yes.

Q: How many times do you recall that that happened?

A: Are you talking about a specific place or overall you just want to know?

Q: Just overall how many times. And I guess I'm just talking about right now the store that you are at, so going back to 2003.

A: 2003 at least a handful of times. Five—anywhere from five to ten times that I can recall myself handling something like that.

Q: Okay. Five to ten times going back from October of 2003 to the present; is that correct?

A: Yes, sir.

See Exh. 11, Discovery Deposition of Jason Perez⁴, p. 41, line 14 – p. 42, line 5; *see also id* at p. 46, line 10 – p. 48, line 24 and p. 57, lines 16-21.

Q: When we started the deposition, we talked a little bit about confusion, and you indicated that there were instances where customers were confused as between the Bass Pro Shops Sportsman's Warehouse and your store going back to the first few months after you opened; is that right?

A: Yes.

Q: How were you made aware of these instances of confusion?

A: By customers coming in and telling me.

Q: So you have first hand knowledge of confusion?

A: With customers, yes.

Q: Do you have a rough estimate, let's say in the first month that your store opened, about how many customers indicated to you that they were confused?

A: In the first month, to my knowledge, approximately five.

Q: And what exactly did they say to you to lead you to believe that they were confused?

A: They cam in and asked if we were part of Bass Pro. And when we said no, they asked why Bass Pro had Sportsman's Warehouse on their building then.

⁴ Jason Perez is currently the store manager for Respondent's Sportsman's Warehouse location in Thornton, Colorado. *See* Exh. 11, Discovery Deposition of Jason Perez, p. 16, lines 19-24.

See Exh. 16, Discovery Deposition of Paul Otte⁵, p. 41, line 3 – p. 42, line 5.

Other employees of Respondent, including its chief executive Stuart Utgaard, likewise recounted instances of actual confusion between Respondent and Bass Pro. *See* Exh. 13, Discovery Deposition of Stuart Utgaard, p. 18, lines 2-25; Exh. 9, Discovery Deposition of William Bome⁶, p. 52, line 21 – p. 53, line 21; Exh. 10, Discovery Deposition of Joel McRae⁷, p. 33, line 18 – p. 34, line 5.

Several Bass Pro employees likewise encountered multiple instances of actual confusion:

Q: . . . Can you describe some of those concerns and complaints?

A: Oh, I've had multiple complaints where customers have come in and they wanted to take the receipt from the other Sportsman's Warehouse and add their purchase to our reward system, which, obviously, we couldn't do. I've had people come in and apply for a position at our Winchester location, which obviously we do not have, due to the confusion on the ads they'd put out in the newspaper. I've had customers come in and try to return products with a receipt from the Winchester Road location under the impression that they're at the same place. I have had customers call and complain about the service they received at the Winchester Road location⁸, thinking that we are the same company. I have had customers bring their coupons in out of the newspaper.

See Exh. 14, Discovery Deposition of Jamison Hensley⁹, p. 28, line 14 – p. 29, line 15.

Q: Did he give you any instructions?

A: Pete informed me to make sure that we were taking care of our customers. And that we were, you know, if customers

⁵ Paul Otte is currently the footwear manager for Respondent's Sportsman's Warehouse location in Memphis, Tennessee. *See* Exh. 16, Discovery Deposition of Paul Otte, p. 7, lines 20-23, p. 22, lines 16-18.

⁶ William Bome is currently the store manager for Respondent's Sportsman's Warehouse location in Aurora, Colorado. *See* Exh. 9, Discovery Deposition William Bome, p. 18, lines 6-13.

⁷ Joel McRae is currently the store manager for Respondent's Sportsman's Warehouse location in Littleton, Colorado. *See* Exh. 10, Discovery Deposition of Joel McRae, p. 13, lines 5-12.

⁸ Respondent operates a Sportsman's Warehouse retail outlet on Winchester Road in the Memphis, Tennessee area.

⁹ Jamison Hensley is currently the merchandising manager for Bass Pro's Sportsman's Warehouse location in Memphis, Tennessee. *See* Exh. 14, Discovery Deposition of Jamison Hensley, p. 11, line 20 – p. 13, line 2.

had questions concerning the two companies, that we were explaining the differences between the two companies. Once the companies open—once that store opened, we had a lot of confusion with our customers. Our customers knew us as Sportsman's Warehouse, and would bring in coupons, would come in looking with their tabs looking for products. We dealt with we have a rewards program, we had customers bringing in their receipts to get points. Customers taking our ads into their locations looking for goods. We had customer complaints. We had prior to the store opening, customers coming say, oh, I hear you're opening another store in the market. Why are you opening another store on Winchester? And we had to—obviously that was—we had to explain to them at that point that was not our company.

...

Q: Can you tell me what types of complaints or concerns you had or you heard about?

A: I touched on before. We had complaints from advertising confusion. Our customers was bringing in their tabs to our store, their coupons into our store to be redeemed. There was rewards points. We have, like I said, a rewards program. The customer wanted to get their receipt points from us for their receipts. We had confusion from the standpoint of our customers would say I was at your other store, and they didn't have this, and you have it in your ad. Or we would have them bring in a flier, I want this product, and we don't carry it. And it was Sportsman's Warehouse's ad. We had, I was at your other store—and we had confusion prior to opening when Sportsman's Warehouse did their mass hire. We had people coming or calling us concerning what time the mass hire was. We had that confusion. We had we would run an ad and we had the people call us, I stopped by and put in an application at your store on Winchester, why haven't I got a phone call back? And then we had customer issues where Jim—I've had customers come in and tell me that, oh, I was at your other store yesterday, and I need, you know, I didn't see this. Why aren't you stocking it at your other store?

See Exh. 15, Discovery Deposition of James Osborne¹⁰, p. 28, line 12 – p. 29, line 1; p. 40, line 8 – p. 41, line 11.

Q: Okay. Have any of the customer complaints that have been directed to you dealt with any kind of confusion with the Winchester Sportsman's Warehouse?

A: Yes, we have some.

Q: And can you elaborate on the nature of those customer complaints?

A: We had an applicant that thought that they were applying for our Winchester location. We get some on location of our other stores, or how to get to our per se South Haven store.¹¹ We get some on pricing, why is our other stores cheaper on a particular item, from time to time.

Q: And when you say other stores, what do you mean by that?

A: Our other locations, our South Haven location or—sometimes they name one of those locations or whatever as our other store.

Q: And those locations in fact are Sportsman's Warehouse Incorporated stores –

A: Right.

Q: --as opposed to Bass Pro stores—

A: Right.

Q: Okay. What else?

A: We have had coupons, gift cards sometimes, maybe a couple times during the holiday time frame.

Q: What do you mean by that, more specifically?

A: Just bringing their—bringing in a coupon from Sportsman's Warehouse company, you know, for us to

¹⁰ From February 2002 – August 2005, James Osborne was the store manager for Bass Pro's Sportsman's Warehouse location in Memphis, Tennessee. He is now the general manager for a Bass Pro retail location in Sevierville, Tennessee. See Exh. 15, Discovery Deposition of James Osborne, p. 16, lines 14 – 25.

¹¹ Respondent operates a Sportsman's Warehouse store within close proximity to Memphis, Tennessee that is referred to, internally and externally, as its South Haven store.

honor or what have you, you know. And of course, you know, telling them that, you know, it's —it's another—it's another company or what have you. Sometimes, you know, customers bring those in, coupons or—because there's a lot of coupons in the particular market, you know, during the holiday times, I guess.

Q: Okay. Has anyone ever attempted to return a product to your store that was purchased from Sportsman's Warehouse Incorporated?

A: Yes.

See Exh. 19, Trial Testimony Deposition of Haden Holley¹², p. 21, line 13 – p. 23, line 8; *see also* Exh. 6, Petitioner's Supplemental Response to Registrant's First Set of Interrogatories, Supplemental Response to Interrogatory 15, p. 5.

In addition to the many instances of actual confusion encountered by both Bass Pro and Respondent, Bass Pro also retained an expert witness to conduct a survey analysis—one which provides further evidence of actual confusion. *See* Exh. 20, Expert Report of Michael Mazis, Ph.D. Dr. Mazis is a professor of marketing in the school of business at American University in Washington, D.C. *See* Exh. 21, Trial Testimony Deposition of Michael Mazis, p. 5, lines 13 – 15. Dr. Mazis was retained to conduct a survey directed to whether a likelihood of confusion exists between Bass Pro Shops Sportsman's Warehouse mark and Respondent's design mark. *See id* at p. 5, lines 16-21. Dr. Mazis' study was based upon the generally accepted practices in the relevant field of likelihood of confusion consumer surveys. *See id* at p. 13, line 3 – p. 37, line 17. Dr. Mazis concluded that based upon the results of the survey evidence generated, over 30% of the consumers surveyed were likely confused in that they thought that the respective parties' marks were put out by the same company. *See id* at p. 39, lines 10-15; p. 41, lines 5-13. In Dr. Mazis' opinion, these findings evidence a substantial likelihood of confusion.

¹² Haden Holley is currently the general manager for Bass Pro's Sportsman's Warehouse location in Memphis, Tennessee. *See* Exh. 19, Trial Testimony Deposition of Haden Holley, p. 7, lines 21 – 25.

Q: Okay. What significance do you place on those particular findings?

A: Well, compared to other surveys that I have done in other opinions I have read, 30 percent is considered a substantial likelihood of confusion.

Q: So is that your expert opinion that the results of this survey indicate that there is a likelihood of confusion?

A: Yes.

See id at p. 43, lines 11 – 20.

Given the overwhelming evidence of actual confusion, this factor undoubtedly weighs in Bass Pro's favor and in favor of a finding of a likelihood of confusion.

(8) Concurrent Use Without Evidence of Actual Confusion

The eighth *DuPont* factor is the length of time during and conditions under which there has been concurrent use without evidence of actual confusion. *See DuPont*, 476 F.2d at 1361, 177 USPQ at 567. This factor weighs in Bass Pro's favor, as the evidence of record is clear that upon Respondent's entry into Bass Pro's market, confusion resulted immediately. *See* Exh. 15, Discovery Deposition of James Osborne, p. 28, line 12 – p. 29, line 1; p. 40, line 8 – p. 41, line 11 (confusion arose immediately upon opening of Respondent's store in Memphis, Tennessee); Exh. 16, Discovery Deposition of Paul Otte, p. 41, line 3 – p. 42, line 5 (confusion began within one month of the opening of Respondent's Memphis, Tennessee store).

(9) Variety of Goods Upon Which Mark Is Used

Use of a mark as a trade name or as a house mark for retail store services is further evidence of a likelihood of confusion. *See The Sports Authority Michigan, Inc. v. The PC Authority, Inc.*, 63 USPQ2d 1782, 1799 (TTAB 2002) ("Because the respective marks are utilized as the parties' respective house marks, this factor slightly favors opposer."). As both

Bass Pro and Respondent use the relevant marks as house marks, this factor weighs in favor of a likelihood of confusion.

(10) Market Interface Between Petitioner and Respondent

This factor is not an issue in this case.

(11) The Extent to Which Respondent Has A Right To Exclude Others From Use Of Its Mark

There is no evidence of record on this factor. Thus, this factor does not favor either party.

(12) Extent of Potential Confusion

The relevant services of both parties, as stated in their respective trademark registrations, are virtually identical. *See* Exh. 2, Bass Pro's Registration No. 2,071,417; Exh. 3, Respondent's Registration No. 2,390,988. Moreover, as explained above, the parties' respective services are offered through the same channels of trade and to the same class of purchasers. Most importantly, even Respondent concedes that there have been numerous documented instances of actual confusion. *See supra*. Accordingly, this factor weighs in favor of Petitioner. *See Cunningham*, 222 F.3d at 949 (with regard to "extent of potential confusion," the Boards findings are supported by substantial evidence that "the relevant goods of both parties were identical, based on identification of goods in the respective registrations, and, as such, traveled in the same channels of trade to the same purchasers.").

Weighing the evidence pertaining to the all of the relevant *DuPont* factors leads to the conclusion that a likelihood of confusion exists.

b. Respondent's Registration Should Be Canceled Because It Was Fraudulently Obtained

A third party may petition to cancel a registered service mark on the grounds that the registration was obtained fraudulently. 15 U.S.C. § 1064(3); *Metro Traffic Control, Inc. v.*

Shadow Network, Inc., 104 F.3d 336, 340, 41 USPQ2d 1369, 1372 (Fed. Cir. 1997). “Fraud in procuring a service mark occurs when an applicant knowingly makes false, material representations of fact in connection with an application.” *See Metro Traffic Control*, 104 F.3d at 340, 41 USPQ2d at 1373 (citation omitted). “The obligation which the Lanham Act imposes on an applicant is that he will not make knowingly inaccurate or knowingly misleading statements in the verified declaration forming a part of the application for registration.” *Id* (citations omitted).

On January 22, 1999, Respondent filed an application with the USPTO, seeking registration of the mark SPORTSMAN’S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR and Design. *See* Exh. 8, Respondent’s Application Serial No. 75/411,966. Respondent’s application alleged Respondent’s use of its SPORTSMANS’ WAREHOUSE and Design mark since June 16, 1995, in connection with “[r]etail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear.” *Id.* (emphasis added). This application led to the registration of Respondent’s mark, as shown below, effective October 3, 2000. *See* Exh. 3, Respondent’s Registration No. 2,390,988. Stuart Utgaard, Respondent’s chief executive officer, signed the declaration for this application on behalf of Respondent, claiming use of Respondent’s mark in connection with, among other things, wholesale stores. *See* Exh. 8, Prosecution History of Respondent’s Reg. No. 2,390,988, pp. 17-18.

Despite claiming use of its mark in connection with “wholesale stores,” it is clear from the record that Respondent never used its mark in connection with offering services relating to wholesale stores. Respondent admitted this fact in discovery, *see*, Exh. 4, Respondent Sportsman’s Warehouse, Inc.’s Answers to Petitioner’s First Set of Interrogatories, Response to Interrogatory No. 8, p. 8, and many of Respondent’s witnesses in this matter unequivocally

confirmed this fact as well. *See* Exh. 9, Discovery Deposition of William Bome, p. 35, lines 7-16; Discovery Deposition of Joel McRae, p. 28, lines 1-16; Discovery Deposition of Jason Perez, p. 26, lines 14-25; Discovery Deposition of Paul Otte, p. 28, lines 6-21. Moreover, Respondent relied, in part, upon its claim that its mark is used in connection with offering “wholesale store” services, to overcome a non-final rejection of its service mark application. *See id* at p. 25. Such mischaracterization of goods/services has been deemed evidence of fraud considered in the cancellation of a trademark. *See, e.g., Torres v. Cantine Torresella*, 808 F.2d 46, 49, 1 USPQ2d 1483, 1485 (Fed. Cir. 1986) (Finding fraud where, among other things, registrant “submitted an affidavit stating the mark was in use on wine, vermouth and champagne when he knew it was in use only on wine); *Western Farmers Assoc. v. Loblaw, Inc.*, 180 USPQ 345, 346-47 (TTAB 1973) (canceling registered trademark where respondent’s affidavit accompanying application for registration included goods for which respondent never used its registered mark).

Respondent’s false representations to the United States Patent and Trademark Office further warrant cancellation of Respondent’s registration.

VI. CONCLUSION

For the foregoing reasons, Bass Pro respectfully requests that the Board finds in its favor and cancels Respondent's Registration No. 2,390,988.

Respectfully submitted, this 21st day of May, 2007.

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VII. CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Petitioner's Case Brief was served on this 21st day of May, 2007, by electronic mail and first class mail, postage prepaid, to the following:

David A. Allgeyer, Esq.
Christopher R. Smith, Esq.
Lindquist & Vennum, PLLP
80 South 8th Street
4200 IDS Center
Minneapolis, MN 55402-2205

/H. Frederick Rusche/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING
OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C)	
)	
v.)	Cancellation No. 92045000
Sportsman's Warehouse, Inc.)	

AMENDED PETITION TO CANCEL

Petitioner is BASS PRO TRADEMARKS, L.L.C., a Limited Liability Company organized and existing under the laws of Missouri, located and doing business at 2500 E. Kearney, Springfield, Missouri 65898 ("Petitioner").

To the best of Petitioner's knowledge, the name and address of the current owner of the registration are as follows: Sportsman's Warehouse, Inc. (Utah Corporation), 7035 High Tech Drive, Midvale, Utah 84047 ("Respondent").

The above-identified Petitioner believes that it will be damaged by the above-identified registration, and hereby amends its original petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark Registration No. 2071417 for the mark BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and Design which was registered on the Principal Register on June 17, 1997. Said registration was based on an application filed in the U.S. Patent Office on March 1, 1996, which is a date prior to the date of filing of Respondent's application. Said registered mark of Petitioner is valid and subsisting and is prima facie evidence

Cancellation No. 92045000
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v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 1

U.S. Patent Office on March 1, 1996, which is a date prior to the date of filing of Respondent's application. Said registered mark of Petitioner is valid and subsisting and is prima facie evidence of Petitioner's exclusive right to use said mark in commerce on the services specified in said registration, namely "retail stores featuring clothing, fishing supplies and sporting goods." In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that Respondent's registered mark so resembles Petitioner's registered mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

2. Respondent's registered mark, when used in connection with the services of respondent, is comprised of a background design and terms that are merely descriptive of the services being provided and that are insufficiently stylized to be inherently distinctive to consumers in the markets served by Respondent.

3. Respondent's registered mark, when used in connection with the services of respondent, is comprised of a common background design and terms that are merely descriptive of the services being provided and that are stylized in a common format (western/frontier) that fails to create a separate and distinct impression necessary for a mark in the markets served by respondent.

4. Since at least as early as January 2, 1995, Petitioner has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said use was begun on a date prior to the date of filing of Respondent's application. Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through

substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that Respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

5. Since at least as early as January 2, 1995, Petitioner has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said use was begun on a date prior to the actual date of first use of the Respondent's registered mark and prior to the Respondent's claimed date of first use. (Upon information and belief, Petitioner further alleges that Respondent's actual date of first use of the registered mark was after the date set forth in the application.) Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that Respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

6. Respondent's registration was obtained fraudulently in that in the formal application papers filed by respondent under notice of 18 U.S.C. § 1001, it was stated that Respondent had used the SPORTSMAN'S WAREHOUSE and Design mark since June 16, 1995, in connection with "[r]etail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear." See Exhibit A, Respondent's Application for Registration (emphasis added). Stuart B. Utgaard, president of

Respondent signed the declaration for the application on behalf of Respondent. *Id.* Said statement was false in that Respondent has not at any time used the SPORTSMAN'S WAREHOUSE mark in any form in connection with wholesale stores. Respondent has admitted this fact during discovery associated with the pending proceeding. *See* Exhibit B, Respondent's Answer to Petitioner's Interrogatory No. 8.

7. The foregoing false statement was made by Respondent with the knowledge that said statement was false. The statement was also confirmed in a subsequent response to an office action issued in connection with the application by Respondent's authorized agent. *See* Exhibit C, February 7, 2000 Response. Said false statements was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant Respondent's registration and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration to Respondent.

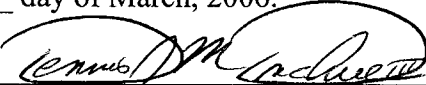
8. Upon information and belief, Respondent has misused the statutory registration notice (Registered Trademark and/or ®) that it obtained for the mark shown in Registration No. 2,390,988 by using such notice in connection with correspondence asserting that Respondent owns a federal registration for the word mark SPORTSMAN'S WAREHOUSE, by itself and without any other terms, visual elements, or stylization, and ordering third parties, in particular, others in the trade of retail sales of sporting goods, hunting supplies, fishing, supplies, and clothing, to cease and desist use of the SPORTSMAN'S WAREHOUSE word mark. Such misuse was intended to deceive others in the trade into believing that Respondent possessed a registration in the word mark SPORTSMAN'S WAREHOUSE.

9. Upon information and belief, Respondent has misused the statutory registration notice (Registered Trademark and/or ®) that it obtained for the mark shown in Registration No. 2,390,988 by using such notice in numerous advertisements to the public in a partial version of the logo mark, i.e., without including the terms HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR, terms Respondent had so carefully used to distinguish its mark from that of Petitioner's prior registration (Reg. No. 2071417) when asserting that the logo mark should be registered. Respondent's assertion of a registration to the word mark SPORTSMAN'S WAREHOUSE and partial versions of the logo mark are part of Respondent's reckless disregard for the proper marking of the logo mark actually registered in Registration No. 2,390,988.

WHEREFORE, Petitioner prays that Registration No. 2,390,988 be cancelled and that this Amended Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints Dennis J.M. Donahue III, Michael D. Bokermann, Rebecca J. Brandau, Dutro E. Campbell II, David A. Chambers, Robert C. Haldiman, Grant D. Kang, Ryan Mitchem, Harry B. Ray, H. Frederick Rusche, and Gregory E. Upchurch of the firm Husch & Eppenberger, LLC, to act as attorneys for Petitioner herein, with full power to prosecute said Petition and to transact all relevant business with the U.S. Patent and Trademark Office and the United States Courts. **Dennis J.M. Donahue III** is hereby authorized to receive all official communications in connection with this Petition for Cancellation.

Respectfully submitted, this 13 day of March, 2006.



Dennis J.M. Donahue III
Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St Louis, MO 63105
Phone 314-480-1642
Fax 314-290-5342
E-mail trademark@husch.com



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

November 21, 2006

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,071,417 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *June 17, 1997*
1st RENEWAL FOR A TERM OF 10 YEARS FROM *June 17, 2007*
SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

BASS PRO TRADEMARKS, L.L.C.

A LIMITED LIABILITY COMPANY OF MISSOURI

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

Lanai Jamison

LANAI JAMISON

Certifying Officer

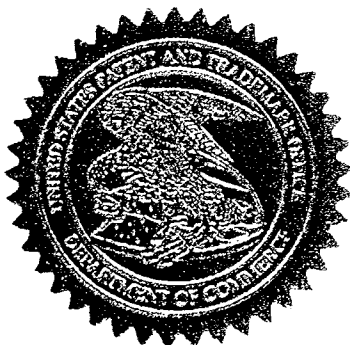


EXHIBIT 1

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 2

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,071,417

Registered June 17, 1997

**SERVICE MARK
PRINCIPAL REGISTER**



Sportsman's Warehouse

BASS PRO TRADEMARKS, L.P. (MISSOURI
LIMITED PARTNERSHIP)
1935 SOUTH CAMPBELL
SPRINGFIELD, MO 65898

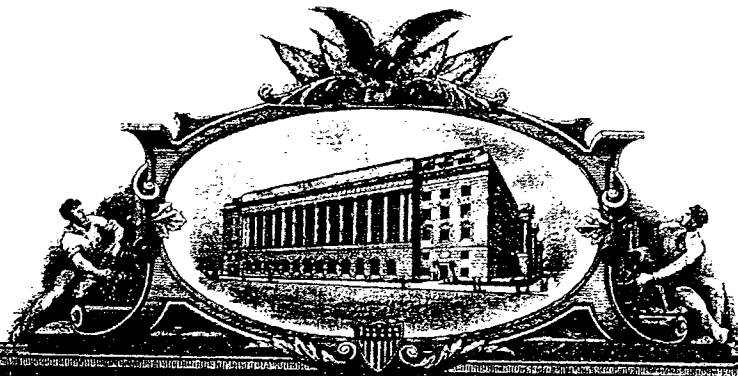
NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SPORTSMAN'S WARE-
HOUSE", APART FROM THE MARK AS
SHOWN.

FOR: RETAIL STORES FEATURING CLOTH-
ING, FISHING SUPPLIES AND SPORTING
GOODS, IN CLASS 42 (U.S. CLS. 100 AND 101).
FIRST USE 1-2-1995; IN COMMERCE
1-2-1995.

SER. NO. 75-066,261, FILED 3-1-1996.

PAULA MAYS, EXAMINING ATTORNEY

1541952



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

November 21, 2006

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,390,988 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 03, 2000*

SECTION 8

LESS GOODS

SAID RECORDS SHOW TITLE TO BE IN:

SPORTSMAN'S WAREHOUSE, INC.

A CORPORATION OF UTAH

By Authority of the

Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office

LANAI JAMISON

Certifying Officer



EXHIBIT 2

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 3

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,390,988

Registered Oct. 3, 2000

SERVICE MARK
PRINCIPAL REGISTER



SPORTS WAREHOUSE, INC. (UTAH CORPORATION)
7035 SOUTH 185 WEST
MIDVALE, UT 84047

FOR: RETAIL ~~AND WHOLESALE~~ STORES FEATURING HUNTING SUPPLIES, FISHING SUPPLIES, CAMPING SUPPLIES, RELOADING SUPPLIES, OUTERWEAR CLOTHING AND FOOTWEAR, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-16-1995; IN COMMERCE 6-16-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTSMAN'S WAREHOUSE" APART

FROM THE MARK AS SHOWN; AND DISCLAIMS THE FOLLOWING INDIVIDUAL WORDS, "HUNTING," "FISHING," "CAMPING," "RELOADING," "OUTERWEAR," AND "FOOTWEAR" APART FROM THE MARK AS SHOWN.

THE LINING AND STIPPLING SHOWN IN THE DRAWING ARE NOT INTENDED TO INDICATE COLOR.

SER. NO. 75-625,090, FILED 1-22-1999.

LINDA E. BLOHM, EXAMINING ATTORNEY

Exhibit 4 Filed as Confidential
Pursuant to the Protective Order Entered in this Matter

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING
OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

-----	:	
Bass Pro Trademarks, L.L.C.,	:	CANCELLATION NO. 92045000
PETITIONER,	:	
	:	
v.	:	
	:	
Sportsman's Warehouse, Inc.,	:	
RESPONDENT	:	

**PETITIONER'S RESPONSES TO REGISTRANT'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Petitioner Bass Pro Trademarks, L.L.C. ("Petitioner" or "Bass Pro"), by and through
counsel of record, hereby objects and further responds to Respondent Sportsman's Warehouse,
Inc.'s ("Respondent" or "Registrant") First Set of Interrogatories and Requests for Production of
Documents as follows:

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 5

RESPONSES TO INTERROGATORIES

Interrogatory No. 1

Describe the nature of Petitioner's business in the United States, including any business in the United States through licensees.

ANSWER: Bass Pro objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome in that it is not limited in time.

Subject to and without waiving any objections, Bass Pro states that the general nature of its business in the United States from 1995 to the present relates to retail sales of consumer goods primarily, but not exclusively, related to outdoor recreational activities, including, but not limited to, hunting, fishing, camping, hiking, boating, archery, through catalog, internet, and brick and mortar stores. In addition, Bass Pro operates outdoor-themed destination resorts and provides educational services relating to outdoor recreational activities and conservation. Bass Pro also provides ancillary services, including financing and vacation travel planning.

Interrogatory No. 2

With respect to Petitioner's Marks:

- (1) State the date and geographic location of the first use of Petitioner's Marks anywhere in the United States in relation to each of the services comprising Petitioner's Services and describe the circumstances of each such first use, including the manner of use and the details of any sale involved, including customer name, number of units sold, and unit price charged;
- (2) State whether or not Petitioner's Marks are currently use in commerce on or in connection with all of the services identified in U.S. Trademark No. 2,071,417. If

Petitioner's Marks are not currently in use in commerce on or in connection with all of the services identified in connection with U.S. Trademark No. 2,071,417, identify the particular services on or in connection with which Petitioner's Marks are not in use and (ii) state the date or dates upon which Petitioner's Marks ceased to be used on or in connection with any of Petitioner's Services.

ANSWER: Bass Pro objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome in that it seeks details of specific sales made in each of Bass Pro's Sportsman's Warehouse retail stores. These stores sell thousands of completely different types of merchandise to hundreds of thousands of different retail customers every year. As indicated below, Bass Pro's Lawrenceville, Georgia store had over \$29 million in sales in its first year of operation.

Subject to and without waiving any objections, Bass Pro states that its first use of the SPORTSMAN'S WAREHOUSE marks, including use of the registered mark (BASS PRO SHOPS SPORTSMAN'S WAREHOUSE with Design) as well as use of the common law marks BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and SPORTSMAN'S WAREHOUSE, occurred when it opened its Lawrenceville, Georgia retail store in 1995. All store signage and advertising referring to that store location made use of the SPORTSMAN'S WAREHOUSE marks. Documents reflecting such usage will be produced to the extent available. The full range of consumer goods sold by Bass Pro, including, but not limited to, clothing, fishing supplies, and sporting goods, was sold at the Lawrenceville store. Bass Pro made \$29,164,000 in retail sales at the Lawrenceville Sportsman's Warehouse store in 1995.

Bass Pro currently uses the SPORTSMAN'S WAREHOUSE marks and has continuously used the marks since 1995. Such use has been in connection with all services identified in U.S.

Trademark No. 2,071,417, including retail stores featuring clothing, fishing supplies, and sporting goods. In 2000, Bass Pro opened a second retail store operating under the SPORTSMAN'S WAREHOUSE marks in Memphis, Tennessee. All store signage and advertising referring to that store location made use of the SPORTSMAN'S WAREHOUSE marks until Registrant entered the Memphis market and began confusing customers. During the week of July 26, 2005, the sign on the building was changed from SPORTSMAN'S WAREHOUSE to SPORTSMAN'S CENTER (U.S. Trademark No. 2,929,833), and the sign on the pylon was also changed on or about August 2, 2005, but Bass Pro continues to use the SPORTSMAN'S WAREHOUSE marks in its advertisements. Documents reflecting such usage will be produced to the extent available. The full range of consumer goods sold by Bass Pro is sold at the Memphis Sportsman's Warehouse store. Bass Pro also operates a Sportsman's Warehouse retail store in St. Charles, Missouri.

Interrogatory No. 3

Describe in detail Petitioner's selection and adoption of Petitioner's Marks, including, without limitation, the origin of Petitioner's Marks for adoption, Petitioner's reasons for selecting Petitioner's Marks for adoption, the date upon which Petitioner adopted the mark and the meaning or impression intended to be conveyed by each of Petitioner's Marks.

ANSWER: Subject to and without waiving any objections, Bass Pro states that the SPORTSMAN'S WAREHOUSE marks were selected for initial use at the Lawrenceville, Georgia retail store because this was the first store Bass Pro opened after the store in Springfield, Missouri which was known as OUTDOOR WORLD (U.S. Trademark No. 2100712) and since the SPORTSMAN'S WAREHOUSE store was significantly scaled-down in size from the

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING
OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C.,
 PETITIONER,

v.

Sportsman's Warehouse, Inc.,
 RESPONDENT

CANCELLATION NO. 92045000

**PETITIONER'S SUPPLEMENTAL RESPONSE TO
REGISTRANT'S FIRST SET OF INTERROGATORIES**

Petitioner Bass Pro Trademarks, L.L.C. ("Petitioner" or "Bass Pro"), by and through
counsel of record, hereby objects and further responds to Respondent Sportsman's Warehouse,
Inc.'s ("Respondent" or "Registrant") First Set of Interrogatories as follows:

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 6

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

Interrogatory No. 15

Describe all instances of actual confusion between any of Petitioner's Marks and Registrant's Mark.

ANSWER: Subject to and without waiving any objections, Bass Pro supplements its prior responses to Interrogatory No. 15 by stating that on or about September 14, 2006, a marketing agency located in Jackson, Tennessee contacted the manager of Bass Pro's Memphis Sportsman's Warehouse retail store regarding the manager's interest in placing an advertisement in a menu for a restaurant in Southaven, Mississippi named La Hacienda. The agency had confused Bass Pro's Memphis Sportsman's Warehouse store with Registrant's store in Southaven, Mississippi.

These incidents of actual confusion continue to occur. Bass Pro's investigation of past and current incidents of actual customer confusion is ongoing and documents relating to such incidents will be produced.

Respectfully submitted with respect to all objections made herein,

HUSCH & EPPENBERGER, LLC



Date: November 3, 2006

Dennis JM Donahue III, Esq.
H. Frederick Rusche, Esq.
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
(314)-480-1500 Telephone
(314)-480-1505 Telefax
dennis.donahue@husch.com
fred.rusche@husch.com

2025

Date registered: October 3, 2000

CANCELLATION NO. 92045000

following Respondent's opening of a competing store in the Memphis market under the SPORTSMAN'S WAREHOUSE name. Bass Pro has provided information concerning this confusion, which continues today in the Memphis market, in previous interrogatory answers. Bass Pro was under no obligation to address the confusion created by Respondent's use of a confusing name by seeking to force Respondent to change its name. Bass Pro sought only to attempt to address the confusion created by Respondent's actions in the most expeditious and cost effective manner possible. Furthermore, Bass Pro retains the right to again use signage bearing the SPORTSMAN'S WAREHOUSE mark for its Memphis store.

The individuals involved in the change of signage at Bass Pro's Memphis Sportsman's Warehouse were:

Pete Perkins – Director of Stores
Kerry Harmon – Vice-President of Retail
Bruce Teter – Director of Retail Planning
Monica Matthias – Retail Planning
Tom Gammon – Director of Store Construction
Sean Easter – Vice-President of Construction
Doug Brugh – Project Manager
Stan Lippelman – Vice-President of Marketing

Responsive, non-privileged documents concerning the change of signage at Bass Pro's Memphis Sportsman's Warehouse will be produced.

Interrogatory No. 20

State the complete factual basis for Petitioner's contention that it began use of the mark SPORTSMAN'S WAREHOUSE prior to the filing date of Registration No. 2,390,988, and identify all documents establishing Petitioner's date of first use of the mark SPORTSMAN'S WAREHOUSE.

ANSWER: Bass Pro objects to this Interrogatory on the grounds that it is duplicative

and/cumulative, harassing, and unduly burdensome in that it seeks information relating to Bass Pro's first date of use of the SPORTSMAN'S WAREHOUSE mark, which has already been provided in response to, among other requests, Respondent's Interrogatory No. 2.

Subject to and without waiving any objections, Bass Pro states that its first use of the SPORTSMAN'S WAREHOUSE marks, including use of the registered mark (BASS PRO SHOPS SPORTSMAN'S WAREHOUSE with Design) as well as use of the common law marks BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and SPORTSMAN'S WAREHOUSE, occurred in association with its Lawrenceville, Georgia retail store, which was advertised beginning in 1994 and opened on March 1, 1995. All store signage and advertising referring to that store location made use of the SPORTSMAN'S WAREHOUSE marks. Documents reflecting such usage have been produced.

Interrogatory No. 21

State the complete factual basis for Petitioner's contention that it began use of the mark SPORTSMAN'S WAREHOUSE prior to Registrant's use of the mark SPORTSMAN'S WAREHOUSE, and identify all documents establishing Petitioner's date of first use of the mark SPORTSMAN'S WAREHOUSE.

ANSWER: Bass Pro objects to this Interrogatory on the grounds that it is duplicative and/or cumulative, harassing, and unduly burdensome in that it seeks information relating to Bass Pro's first date of use of the SPORTSMAN'S WAREHOUSE mark, which has already been provided in response to, among other requests, Respondent's Interrogatory Nos. 2 and 20.

Subject to and without waiving any objections, Bass Pro states that its first use of the SPORTSMAN'S WAREHOUSE marks, including use of the registered mark (BASS PRO

SHOPS SPORTSMAN'S WAREHOUSE with Design) as well as use of the common law marks BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and SPORTSMAN'S WAREHOUSE, occurred in association with its Lawrenceville, Georgia retail store, which was advertised beginning in 1994 and opened on March 1, 1995. All store signage and advertising referring to that store location made use of the SPORTSMAN'S WAREHOUSE marks. Documents reflecting such usage have been produced.

TRADEMARK



75625090

75625090

New Case

Aug 13 1999

Law Office 110

CONTENTS

	Entry	Date	Initials
1			
2	Amended Petition	8/13/99	
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07/11/00

DEPOSITION
EXHIBIT

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See inside of file for additional entries

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 8

SP 00362

6/24/60
RMS

FE

SP 00363

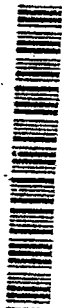
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REG NUM: 2390988

REG DT: 10/03/2000

S/N 75/625090

75-625090



SPORTSMAN'S
WAREHOUSE

SPORTSMAN'S WAREHOUSE

LAW OFFICE 100 110

PRINCIPAL
BLOHM

ATTORNEY ADVISOR:

PUBLISHED
07/11/00

SP 00364

75625090

Just In Time For Father's Day



Sportsman's Warehouse opens new store in Provo

Now With Two Great Stores To Serve You!

Hodgman • Danner • Hi-Tec • Timberland • Merrell •
Lacrosse • Sorel • Columbia • Browning • Wrangler
(Rugged Wear) • Carhartt • Nikon • Pentax • Buck • Gurber
• Leatherman • Zeiss • Kershaw • Bushnell • Coleman •
Slumberjack • Old Town • Lodge • Camp Chef • Wenzel •
Remington • Winchester • Ruger • Federal • Smith &
Wesson • Bennelli • Casco • Leupold • RCBS • Zebco •
Shakespeare • Plano • Lowrance • Minn Kota • Caddis •
G. Loomis • Leigh Outdoors • Shimano • Troutsman



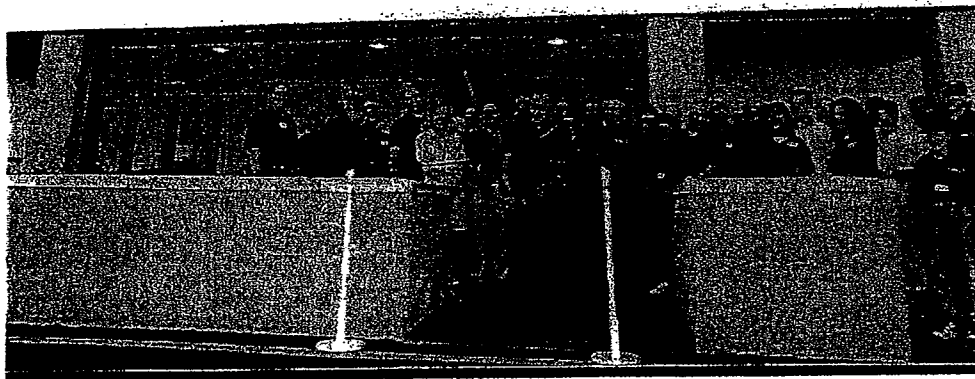
7035 S. 185 West, Midvale • 566-6662
1075 South University Ave. Provo • 818-2000

• Mon-Thurs 9:30-7:00 • Friday 9:30-8:00 •
• Saturday 9:00-6:00 • Closed Sunday •

SP 00365

SPORTSMAN'S WAREHOUSE

RENTAL STORES IN VARIOUS AREAS OF THE U.S.A. & CANADA



75625090

SP 00366



01-22-1999

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #10

DRAWING



APPLICANT NAME:

Sports Warehouse, Inc.

APPLICANT ADDRESS:

7035 South 185 West
Midvale, Utah 84047

DATE OF FIRST USE:

June 16, 1995

**DATE OF FIRST USE IN
COMMERCE:**

June 16, 1995

GOODS:

Retail and wholesale stores featuring hunting supplies,
fishing supplies, camping supplies, reloading supplies,
outerwear clothing and footwear.

3511



PUBLISHED
07/11/00

TRADEMARK



75625090

*** User: lblohm ***

#	Total Marks	Dead Marks	Live Viewed Documents	Live Viewed Images	Status	Search
01	8	4	3	3		"sports warehouse"[on]
02	13348	N/A	0	0		*sport*[bi,ti]
03	8777	N/A	0	0		(*ware* or *ware*)[bi,ti]
04	10245	N/A	0	0		*hous*[bi,ti]
05	50	29	21	21		2 and (3 or 4)
06	1050	N/A	0	0		3 and 4
07	4747	N/A	0	0		"060104"[dc]
08	667312	N/A	0	0		"035"[cc]
09	1529	N/A	0	0		7 and 8
10	132529	N/A	0	0		("035" or a or b or "200")[ic]
11	259	91	168	168		7 and 10
12	11	7	4	4		6 and (2 or 9)
13	1554	N/A	0	0		7 and (2 or 9)
14	39	18	21	21		7 and (2 or 6)

Session started 8/3/99 10:46:54 AM
Session finished 8/3/99 10:54:04 AM
Duration 8 minutes

Default NEAR limit= 1 ADJ limit= 1

*** User: lblohm *** Serial Number: 75411966 *** 8/3/99 10:48:15 AM ***

[Typed Drawing]

Mark

TENNIS WAREHOUSE

Goods and Services

IC 035. US 100 101 102. G & S: Retail Mail order Store Featuring
Tennis Related Equipment. FIRST USE: 19920801. FIRST USE IN COMMERCE:
19920801

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75411966

Filing Date

December 29, 1997

Supplemental Register Date

July 9, 1999

Owner Name and Address

(APPLICANT) SPORTS WAREHOUSE CORPORATION BY ASSIGNMENT CALIFORNIA 778
HIGUERA SAN LUIS OBIS CALIFORNIA 93401

Assignment Recorded

ASSIGNMENT RECORDED

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TENNIS" APART FROM THE
MARK AS SHOWN

Type of Mark

SERVICE MARK

Register

SUPPLEMENTAL

Live Dead Indicator

LIVE

*** Search: 1 *** Document Number: 1 ***

SP 00369



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

Jun 9, 2000

NOTICE OF PUBLICATION UNDER 12(a)

- | | |
|--------------------------------------|-------------------------------------------------------------------------|
| 1. Serial No.:
75/625,090 | 2. Mark:
SPORTSMAN'S WAREHOUSE HUNTING FISHING CA
Etc. and design |
| 3. International Class(es):
35 | |
| 4. Publication Date:
Jul 11, 2000 | 5. Applicant:
Sports Warehouse, Inc. |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$38.00 each for domestic orders, or at \$47.50 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202)512-1800

By direction of the Commissioner.

TRADEMARK EXAMINATION WORKSHEET

☐ AMENDMENT STAGE

☐ NO CHANGE

☒ PUBLICATION/REGISTRATION STAGE

Name: KEISHA HODGE L.O. L06 Date 5-13-00

Serial No 71/625090

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

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		<input type="checkbox"/> 1b	
Mark Data		<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
		<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
		<input type="checkbox"/> Sizing/Lining Code	
Misc. Mark Data		<input type="checkbox"/> Mark Description	<input checked="" type="checkbox"/> Disclaimer
		<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
		<input type="checkbox"/> Translation	
Section 2(f)		<input type="checkbox"/> Section 2(f) Entire Mark	
		<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
		<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data		<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
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		<input type="checkbox"/> Zip Code	
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		<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
		<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.		<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.		<input type="checkbox"/> Prior Registration	
Correspondence		<input checked="" type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
		<input type="checkbox"/> Attorney Docket Number	
		<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

KH _____ 5-13-00 _____
 LIE DATE

Other: _____

TRADE MARK EXAMINATION WORKSHEET

☒ AMENDMENT STAGE

☐ NO CHANGE

☐ PUBLICATION/REGISTRATION STAGE

Name: Amphone Mary Sananikone

L.O. 110

Date 3/15/00

Serial No. 751625090

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Prime/International Class	<input type="checkbox"/> Goods and Services
	<input type="checkbox"/>	<input type="checkbox"/> First Use Date	<input type="checkbox"/> First Use in Commerce Date
	<input type="checkbox"/>	<input type="checkbox"/> In Another Form	<input type="checkbox"/> Certification
	<input type="checkbox"/>	<input type="checkbox"/> 1b	
Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
	<input type="checkbox"/>	<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
	<input type="checkbox"/>	<input type="checkbox"/> Sizing/Lining Code	
Misc. Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Mark Description	<input checked="" type="checkbox"/> Disclaimer
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
	<input type="checkbox"/>	<input type="checkbox"/> Translation	
Section 2(f)	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Entire Mark	
	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
	<input type="checkbox"/>	<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data	<input type="checkbox"/>	<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data	<input type="checkbox"/>	<input type="checkbox"/> Owner Name	<input type="checkbox"/> DBA/AKA/TA
	<input type="checkbox"/>	<input type="checkbox"/> Address 1	<input type="checkbox"/> Address 2
	<input type="checkbox"/>	<input type="checkbox"/> City	<input type="checkbox"/> State
	<input type="checkbox"/>	<input type="checkbox"/> Zip Code	
	<input type="checkbox"/>	<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
	<input type="checkbox"/>	<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
	<input type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.	<input type="checkbox"/>	<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.	<input type="checkbox"/>	<input type="checkbox"/> Prior Registration	
Correspondence	<input type="checkbox"/>	<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
	<input type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number	
	<input type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

AMS
LIE

DATE

3/15/00

Other: _____

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/625090 Sports Warehouse, Inc.		PAPER NO.	
MARK SPORTSMAN'S WAREHOUSE HUNTING FISHING CAETC		ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513	
ADDRESS BRUCE H. LITTLE, LINDQUIST & VENNUM P.L.L.P. 4200 IDS CENTER 80 SOUTH EIGHTH STREET MINNEAPOLIS, MINNESOTA 55402	ACTION NO. 01	If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
	MAILING DATE 08/06/99		
	REF. NO. 1077760 1		
FORM PTO-1525 (5-90)	U.S. DEPT. OF COMM. PAT. & TM OFFICE	Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/625090 SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING OUTERWEAR and design

The assigned trademark examining attorney has reviewed the referenced application and determined the following.

Section 2(d) Refusal Registration is refused under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified services, so resembles the mark in U.S. Registration No. 2071417 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

Applicant's proposed mark and the cited registrant's are confusingly similar,
SPORTSMAN'S WAREHOUSE HUNTING · FISHING · CAMPING · RELOADING ·
OUTERWEAR · FOOTWEAR and design vs. BASS PRO SHOPS SPORTSMAN'S WAREHOUSE
and design.

The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP section 1207.01(b).

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977).

When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956).

Each mark contains the words SPORTSMAN'S WAREHOUSE

SPORTSMAN'S WAREHOUSE, while descriptive, is the dominant feature of the applicant's in mark for several reasons: 1) it presented in larger font 2) it is embossed over the mountain range design, and 3) the remaining terms are informational as to the type of equipment applicant retail and whole stores feature.

The examining attorney must consider the marks in their entireties in determining whether there is likelihood of confusion. A disclaimer does not remove the disclaimed portion from the mark for the purposes of this analysis. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984); *In re MCI Communications Corp.*, 21 USPQ2d 1535 (Comm'r Pats. 1991).

sports-man

1. A man who is active in sports.
2. A person whose conduct and attitude exhibit sportsmanship.

ware-house

1. A place in which goods or merchandise are stored; a storehouse.
2. *Chiefly British.* A large, usually wholesale shop.¹

The services of the parties are related and overlap as to retail stores, and overlap further in that both feature fishing supplies.

It is well settled that the issue of likelihood of confusion between marks must be determined on the basis of the goods or services as they are identified in the application and the registration. *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973). Since the identification of the applicant's services is more extensive, it is presumed that the application encompasses all services of the type described, including those in the

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

registrant's more specific identification, that they move in all normal channels of trade and that they are available for all potential customers.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. Additionally, the applicant must also respond to the following.

Lining / Stippling Statement The lining and stippling shown in the drawing appears to be a feature of the mark and not intended to indicate color. The applicant must insert a statement to that effect. 37 C.F.R. Section 2.35; TMEP section 807.06(d).

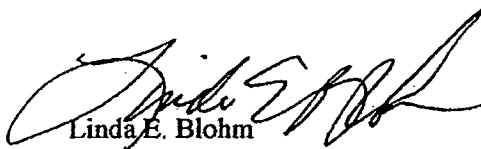
Disclaimer The applicant must disclaim the descriptive wording SPORTSMAN'S WAREHOUSE HUNTING · FISHING · CAMPING · RELOADING · OUTERWEAR · FOOTWEAR apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.02(a). The wording is merely descriptive because the retail and wholesale stores are presumed to be *warehouse style* featuring goods for the sportsman; while hunting, fishing, camping, reloading, outerwear and footwear are merely informational.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.09(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use **SPORTSMAN'S WAREHOUSE
HUNTING · FISHING · CAMPING · RELOADING · OUTERWEAR ·
FOOTWEAR** apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

Classification The applicant has classified the goods incorrectly. The applicant must amend the application to classify the goods in International Class 35. 37 C.F.R. Sections 2.33(a)(1)(vi) and 2.85; TMEP sections 805 and 1401.


Linda E. Blohm
Trademark Examining Attorney
Law Office 110, 703.308.9110 ext.130
facsimile: 703.308.9091



Sportsman's Warehouse

Mark

BASS PRO SHOPS SPORTSMAN'S WAREHOUSE

Pseudo Mark

BASS PRO SHOPS SPORTSMANS WAREHOUSE

Goods and Services

IC 042. US 100 101. G & S: retail stores featuring clothing, fishing supplies and sporting goods. FIRST USE: 19950102. FIRST USE IN COMMERCE: 19950102

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

031924 031925 260302

Serial Number

75066261

Filing Date

March 1, 1996

Publication for Opposition Date

March 25, 1997

Registration Number

2071417

Registration Date

June 17, 1997

Owner Name and Address

(REGISTRANT) BASS PRO TRADEMARKS, L.P. composed of BassGec Management Company, a Missouri corporation LIMITED PARTNERSHIP MISSOURI 1935 South Campbell Springfield MISSOURI 65898

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTSMAN'S WAREHOUSE" APART FROM THE MARK AS SHOWN

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

**SERVICE MARK APPLICATION,
PRINCIPAL REGISTER, WITH
DECLARATION**

**MARK: SPORTSMAN'S WAREHOUSE
HUNTING FISHING CAMPING RELOADING
OUTERWEAR FOOTWEAR and Design
CLASS NO. 42**

**TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND
TRADEMARKS:**

Applicant Name: Sports Warehouse, Inc.

Applicant Business Address: 7035 South 185 West
Midvale, Utah 84047

Applicant Entity:

Applicant is a corporation organized under the laws of the State of Utah

Services:

Applicant requests registration of the above-identified service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et seq., as amended) for the following services: Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear.

Basis for Application:

Applicant is using the mark in commerce on or in connection with the above-identified services. (15 U.S.C. 1051(a), as amended.) Three specimens showing the mark as used in commerce are submitted with this application.

■ Date of first use of the mark anywhere: June 16, 1995

■ Date of first use of the mark in commerce which the U.S. Congress may regulate: June 16, 1995

■ Specify the type of commerce: Interstate

■ Specify the manner or mode of use of mark on or in connection with the services: the mark is used in advertising and promotional materials.

Disclaimers

The applicant makes no claim to the exclusive right to use "Sportsman's Warehouse" apart from the mark as shown.

The applicant disclaims the following individual words; "Hunting," "Fishing," "Camping," "Reloading," "Outerwear" and "Footwear" apart from the mark as shown.

POWER OF ATTORNEY

Please recognize Bruce H. Little, member of the Bar of the State of Minnesota, and member of the law firm of Lindquist & Vennum P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402 to prosecute this application to register, to transact all business in connection therewith, and to receive the certificate.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Dated:

Sports Warehouse, Inc.

12/16/98

By

Stuart B. Hyman

Its

President

LINDQUIST & VENNUM P.L.L.P.

ATTORNEYS AT LAW

Bruce H. Little
(612) 371-2437
blittle@lindquist.com

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MINNEAPOLIS, MINNESOTA 55402-2205
TELEPHONE: 612-371-3211
FAX: 612-371-3207

IN DENVER
LINDQUIST, VENNUM & CHRISTENSEN P.L.L.P.
600 17TH STREET, SUITE 2125
DENVER, COLORADO 80202-5401
TELEPHONE: 303-573-5900

January 19, 1999

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Mark: **SPORTSMAN'S WAREHOUSE HUNTING FISHING
CAMPING RELOADING OUTERWEAR FOOTWEAR**
Class: 42
Our File No.: 433225.0007

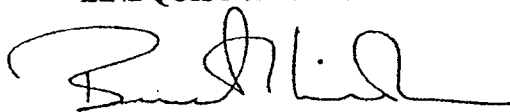
Dear Sir/Madam:

Enclosed for filing pursuant to 15 U.S.C. §1051(a) as amended, please find a service mark registration application for the above-referenced mark along with three specimens of the mark as currently used in commerce, and, a check, made payable to the Commissioner of Patents and Trademarks, in the amount of \$245 for payment of the requisite filing fee.

Please contact the undersigned if you have any questions or need further information regarding this mark.

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.



Bruce H. Little

Enclosures

cc: Sports Warehouse, Inc. (without enclosures)

Doc# 1088542\1

SP 00380

75625090

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

01/29/1999 CKRY11 00000016 75625090

01 FC:361

245.00 DP



01-22-1999

U.S. Patent & TMO/TM Mail Rcpt Dt. #10

DRAWING

APPLICANT NAME: Sports Warehouse, Inc.

APPLICANT ADDRESS: 7035 South 185 West
Midvale, Utah 84047

DATE OF FIRST USE: June 16, 1995

**DATE OF FIRST USE IN
COMMERCE:** June 16, 1995

GOODS: Retail and wholesale stores featuring hunting supplies,
fishing supplies, camping supplies, reloading supplies,
outerwear clothing and footwear.



Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,390,988

United States Patent and Trademark Office

Registered Oct. 3, 2000

**SERVICE MARK
PRINCIPAL REGISTER**



SPORTS WAREHOUSE, INC. (UTAH CORPORATION)
7035 SOUTH 185 WEST
MIDVALE, UT 84047

FOR: RETAIL AND WHOLESALE STORES FEATURING HUNTING SUPPLIES, FISHING SUPPLIES, CAMPING SUPPLIES, RELOADING SUPPLIES, OUTERWEAR CLOTHING AND FOOTWEAR, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-16-1995; IN COMMERCE 6-16-1995.
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORTSMAN'S WAREHOUSE" APART

FROM THE MARK AS SHOWN; AND DISCLAIMS THE FOLLOWING INDIVIDUAL WORDS, "HUNTING," "FISHING," "CAMPING," "RELOADING," "OUTERWEAR," AND "FOOTWEAR" APART FROM THE MARK AS SHOWN.

THE LINING AND STIPPLING SHOWN IN THE DRAWING ARE NOT INTENDED TO INDICATE COLOR.

SER. NO. 75-625,090, FILED 1-22-1999.

LINDA E. BLOHM, EXAMINING ATTORNEY

110

LINDQUIST & VENNUM P.L.L.P.

4200 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MN 55402
TELEPHONE: 612-371-3211
FAX: 612-371-3207



02-09-2000

ATTORNEYS AT LAW

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612-371-2437
blittle@lindquist.com

U.S. Patent & TMO/TM Mail Rpt Dt. #57

IN ST. PAUL:
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ST. PAUL, MN 55101
TELEPHONE: 651-312-1300
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600 17TH STREET, SUITE 1800 SOUTH
DENVER, CO 80202
TELEPHONE: 303-573-5900
FAX: 303-573-1956

www.lindquist.com

JA

February 7, 2000

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, certified mail, return receipt requested in an envelope addressed to:

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

on 2/7/2000
Date

Signature

Bruce H. Little
Typed or printed name of person signing certificate

Ms. Linda E. Blohm
Trademark Examining Attorney
United States Patent and Trademark Office
Law Office 110
2900 Crystal Drive
Arlington, VA 22202-3513

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: **Mark:** SPORTSMAN'S WAREHOUSE HUNTING FISHING
CAMPING RELOADING OUTERWEAR FOOTWEAR & Design
Serial No.: 75/625090
Our File No.: 433225-0007
Office Action Date: August 6, 1999

Dear Ms. Blohm:

We are in receipt of Office Action No. 1 with regard to the above-referenced mark and we respond on behalf of Applicant.

Doc# 119469811

RECEIVED
FEB 11 P 3:45
LAW OFFICE 110

SP 00384

LINDQUIST & VENNUM P.L.L.P.

Ms. Linda E. Blohm
February 7, 2000
Page 2

THERE IS NO LIKELIHOOD OF CONFUSION

The Examining Attorney initially refused registration of Applicant's mark pursuant to 15 U.S.C. § 1052(d) because the mark is allegedly confusingly similar to the registered mark "BASS PRO SHOPS SPORTSMAN'S WAREHOUSE," U.S. Registration No. 2,071,417. Despite the Examining Attorney's contention that the marks are confusingly similar, the marks are sufficiently distinct and registration should issue. Moreover, because of the Examining Attorney's amendment re-classifying the services in Class 35, the already remote likelihood that Applicant's mark will be confused with the BASS PRO SHOPS mark has been reduced.

The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison but rather whether the marks are sufficiently similar so that there is a likelihood of confusion as to the source of the good or services. In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. TMEP § 1207.01(b) (citing Sealed Air Corp. v. Scott Paper Co., 190 U.S.P.Q. 106, 109 (TTAB 1975)).

Although both marks contain the phrase "Sportsman's Warehouse," the overall commercial impression created by the marks is distinct. The mark cited by the Examining Attorney features prominently the phrase "BASS PRO SHOPS" in a distinctive design in the form of an open-mouthed fish (a bass). The phrase "BASS PRO SHOPS" does not appear anywhere in the Applicant's mark. Nor does there appear in Applicant's mark the design of a fish.

By contrast, Applicant's mark contains a design featuring mountains and the words "HUNTING FISHING CAMPING RELOADING OUTERWEAR FOOTWEAR." None of those words appear anywhere in the "BASS PRO SHOPS" mark cited by the Examining Attorney. Applicant's mark prominently features a design of mountains, while the "BASS PRO SHOPS" mark is predominantly an open-mouthed fish. Due to the numerous differences in the visual impressions created by the marks, there is no likelihood of confusion.

The only feature the two marks share is the phrase "Sportsman's Warehouse." The owner of the "BASS PRO SHOPS" mark made the following disclaimer: "No claim is made to the exclusive right to use "SPORTSMAN'S WAREHOUSE" apart from the mark as shown." Similarly, Applicant affirmatively disclaimed the exclusive right to use the term "Sportsman's Warehouse." A disclaimer in a trademark registration amounts to a statement that, in so far as that particular registration is concerned, no rights are being asserted in the disclaimed component

LINDQUIST & VENNUM P.L.L.P.

Ms. Linda E. Blohm
February 7, 2000
Page 3

standing alone, but rights are asserted in the composite. TMEP § 1213 (citing Sprague Electric Co. v. Erie Resistor Corp., 101 U.S.P.Q. 486, 486-87 (Comm'r Pats. 1954)). Thus, because the owner of the "BASS PRO SHOPS" mark has disclaimed the exclusive right to use the phrase "SPORTSMAN'S WAREHOUSE," that phrase should not prevent the Applicant from obtaining a registration for its dissimilar mark containing the same descriptive phrase. As noted above, numerous differences exist between the marks, and there is only one similarity. Because the only similarity between the marks is a descriptive phrase that has been disclaimed by the owners of both marks, registration must issue.

In addition, Registration No. 2,071,417 was issued to Bass Pro Trademarks L.P. in International Class 42, "Miscellaneous" for "Retail stores featuring clothing, fishing supplies and sporting goods." Applicant seeks registration in Class 35, "Advertising and business" for a much broader variety of services: "Retail and wholesale stores featuring hunting supplies, fishing supplies, camping supplies, reloading supplies, outerwear clothing and footwear." At a minimum, Applicant should be permitted to amend to delete the phrase "fishing supplies" from its description of services, and registration should issue.

A registration is indicative of "the registrant's exclusive right to use the mark in commerce on or in connection with the goods or services specified in the certificate." 15 U.S.C. § 1057(b). Even if a mark is registered, "the presumption of an exclusive right to use it extends only so far as the goods or services noted in the registration certificate." Mushroom Makers, Inc. v. R.G. Barry Corp., 580 F.2d 44, 48 (2d Cir. 1978). Even an incontestable mark – and the "BASS PRO SHOPS" mark is not incontestable – does not permit a registrant to claim rights over a greater range of products than he would otherwise be entitled to claim. Union Carbide Corp. v. Ever-Ready Inc., 531 F.2d 366, 377 (7th Cir. 1976); Sunmark, Inc. v. Ocean Spray Cranberries, Inc., 64 F.3d 1055, 1058 (7th Cir. 1995).

The "BASS PRO SHOPS" registration and Applicant's mark have in common only the descriptive phrase "SPORTSMAN'S WAREHOUSE." Use of that disclaimed phrase is not a proper basis for extending the scope of the Registrant's mark and denying registration to Applicant.

LINING/STIPPLING STATEMENT

✓ The lining and stippling shown in the drawing are not intended to indicate color. *WINT*

LINDQUIST & VENNUM P.L.L.P.

Ms. Linda E. Blohm
February 7, 2000
Page 4

DISCLAIMER

No claim is made to the exclusive right to use "SPORTSMAN'S WAREHOUSE
HUNTING • FISHING • CAMPING • RELOADING • OUTERWEAR • FOOTWEAR" apart
from the mark as shown.

CLASSIFICATION

The Application is amended to classify the goods in International Class 35.

LINDQUIST & VENNUM P.L.L.P.



Bruce H. Little

cc: Enterprise Investments, Inc.



State of Utah

Department of Commerce
Division of Corporations and
Commercial Code
160 East 300 South 2nd Floor
Box 146705
Salt Lake City, Utah 84114-6705

Trademark File#

For office use only

Application for State Trademark or Service Mark Registration

(It is the applicant's responsibility to check for conflicts with federally registered trademarks or service marks)

Please type all entries. Complete all spaces. See instructions on other side.

1. Applicant's Name: Sports Warehouse, Inc.
2. Applicant's address: 218 West 1st Street, P.O. Box 10, Star Prairie WI 54026-0010
Street Number City State Zip
3. Daytime telephone number (include area code): 801/561-6681
4. State in which applicant was formed as a business: Utah
5. Is this a new application? ☒ Renewal? ☐ (enter TM file number) _____

6. Describe the trademark or service mark: The mark consists of the words
"SPORTSMAN'S WAREHOUSE"

7. How will the trademark or service mark be used: Displays, signs, advertising materials,
television advertising, letterhead, business cards, hats, coffee cups.

8. Describe the product or service associated with the mark: Retail sales of sporting goods
and equipment.

Attach two specimens of the mark on
separate pages.

9. Date of first use of the trademark or service
mark:

1. Utah 6/30/94
outside Utah 04/15/96

10. Certificate

I hereby certify that I own and have the right to use the trademark or
service mark applied for, that to the best of my knowledge it is neither
identical to nor deceptively similar to any other registered trademark or
service mark, and that the two specimens or facsimiles attached to this
application are representative of the trademark or service mark.

Thant B. Utigard
Applicant's signature
Chairman/CEO 10/18/99
Title Date

DO NOT WRITE IN THIS SPACE

FORM TRADMK

SP 00388

Sporting goods retailer to expand Midvale store, open another in Provo

by Barbara Rattle
Managing Editor



Fred Hayes/The Enterprise
Sportsman's president Stu Utgaard, expansions to be complete in May.

Sportsman's Warehouse, a Midvale retailer of hunting, fishing, reloading and camping products and supplies, is preparing to nearly double the size of its Salt Lake area store and to open a second location in Provo.

Stuart B. Utgaard, who purchased Sportsman's Warehouse and its sister wholesale company Pacific Flyway Wholesale on Nov. 1 of last year, said both the Midvale expansion and the new Provo location should be complete by May.

In January, Pacific Flyway will move from quarters it shares with Sportsman's Warehouse in Midvale to newly-leased, 15,000 square foot quarters at 1009 W. 3160 So.

Once Pacific Flyway is relocated, its Midvale space will be combined with that of Sportsman's Warehouse, 7037 So. 185 W., expanding Sportsman's retail presence there from 26,000 to 42,000 square feet, Utgaard said. A present staff of approximately 80 full and part-time employees will probably be increased by 10 as a result of the store growing in size, he added. The store will remain open during construction.

Ground has been broken for the firm's 35,000 square foot retail store on University Ave. in Provo.

Utgaard said he expects to hire between 50 and 60 people to staff the facility, projected to open this coming May.

Eckman & Midgley Construction, Midvale, is acting as general contractor for both projects, which are being financed internally, according to Utgaard.

More Sportsman's Warehouse stores are in the planning stages, he

said, noting "I'd say we're the largest retailer of hunting, fishing and camping [products] in Utah."

Pacific Flyway leased its new wholesale warehouse space through Jim Sheldon of CB Commercial.

Utgaard is no stranger to Utah's sporting goods industry. His St. Paul, Minnesota-based mid-market mergers and acquisition brokerage, Enterprise Investments Inc., was instrumental in arranging for the sale of Salt Lake's Udisco Inc./Sunset Sports Centers to Malone & Hyde Inc. in 1980.

The following year, Utgaard helped orchestrate the sale of Wolfe's Department Stores, Salt Lake, also to Malone & Hyde.

Since its formation in 1972, Enterprise Investments Inc. has been involved in 98 transactions for 100 clients valued at roughly \$1.5 billion.

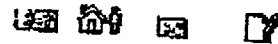
Texas Fishing Forum

Topic Gander Mtn. vs. BPS. vs. Sportsmans Wa

an average joe



posted 12-16-2004 09:27 AM 12-16-2004 09:27 AM



In your opinion tell me who is #1 in
Tackle Selection
Prices
Service (helpfulness of staff)

I have now been to all 3 and I think I'd rate them this way
Tackle Selection - Sportsmans
Price - BPS and Sportsmans (tie)
Service - Sportsmans

Ian

Posts: 427 | From: Waxahachie, TX, USA | Registered: Jun 2003 | IP: Logged | Report Post

RedRanger



posted 12-16-2004 09:37 AM 12-16-2004 09:37 AM



I saw that Gander mountain down 45..

It sure is small.....



Posts: 1916 | From: Irving | Registered: Aug 2003 | IP: Logged | Report Post

StreakBreaker



posted 12-16-2004 09:42 AM 12-16-2004 09:42 AM



Service = Sportmans

Price = BPS

Selection = tie

GanderMtn = not been there yet

However, IF I had to rate who'd get my business...it'll be
Sportman's Warehouse. I'll pay a little more for the better service
and less hassle. Period.

An uncanny resemblance.....



Posts: 2343 | From: Collin County | Registered: Mar 2004 | IP: Logged | [Report Post](#)

champion191
Angler

posted 12-16-2004 09:47 AM 12-16-2004 09:47 AM

how close is sportsman's warehouse to bass-pro? never been there before. where is it?

Posts: 363 | From: Commerce TX, USA | Registered: Dec 2003 | IP: Logged | [Report Post](#)

TCB
Outdoorsman

posted 12-16-2004 09:52 AM 12-16-2004 09:52 AM

Sportsmans Warehouse is located on 35E and Habron Parkway, next to Target. Their selection isn't as vast as BPS but they carry a large selection of items from out West. Not to mention I've always received great customer service.

Posts: 183 | From: Keller, Tx | Registered: Nov 2001 | IP: Logged | [Report Post](#)

probass911
TFF
MEMBER
TFF Pro Angler

posted 12-16-2004 10:33 AM 12-16-2004 10:33 AM

Just glad they are all here. Nice to have so many good places to get what you need. Add Cabela's and we really have it good around here. Mark

MARK PERRY



Posts: 2273 | From: Lake Bridgeport, Texas USA | Registered: Jan 2004 | IP: Logged | [Report Post](#)

Bass Champ
203
Angler

posted 12-16-2004 12:39 PM 12-16-2004 12:39 PM

Sportsmans Warehouse then BPS. Never been to Gander Mountain. Where is it?

Brian McCarty
"Bringing A Dream - Home To You!"
Ebby Halliday Realtors
(214)683-7663
brianmccarty@ebby.com

Posts: 352 | From: Frisco, TX, USA | Registered: May 2003 | IP: Logged | [Report Post](#)

Big Joe8565
Angler

posted 12-16-2004 12:40 PM 12-16-2004 12:40 PM

I've not been to Sportsmans Warehouse yet, but I've been to BP and Gander Mountain. I was impressed with Gander Mountain and the variety of merchandise they carried. They have most everything I fish with and I was pleased with their customer service. They seemed much friendlier than the folks at BP. My .02 cents. Once they build the Bass Pro in Garland, I'm sure I'll do most of my shopping there. It's 5 minutes for the house...

Posts: 380 | From: Dallas | Registered: Jan 2003 | IP: Logged | [Report Post](#)

Goat Farmer
Angler Extreme

[Posted](#) 12-16-2004 12:44 PM 12-16-2004 12:44 PM [L](#) [E](#) [H](#) [M](#)

Sportsman's for the selection and price
Bass pro for the atmosphere and the Bass tanks/feedings

Bass pro has a good selection too, but sometimes I feel like they push their own products too much and keep some name brand competition out. That may not be true, but that's what it seems like.

Sportsmans has some cool stuff you can't get at bass pro.

Gander mountain - never been

Posts: 928 | From: Texas, USA | Registered: Feb 2003 | IP: Logged | [Report Post](#)

**bass-
assassin1**
Outdoorsman

[Posted](#) 12-16-2004 01:02 PM 12-16-2004 01:02 PM [L](#) [E](#) [H](#) [M](#)

You guys are lucky you have all those choices close by. All we have is Academy but from what I hear we will soon have a BPS.

Posts: 120 | From: san antonio | Registered: Mar 2004 | IP: Logged | [Report Post](#)

an average_joe



[Posted](#) 12-16-2004 01:14 PM 12-16-2004 01:14 PM [L](#) [E](#) [H](#) [M](#)

Gander Mtn is off I-45 in corsicana south of the metroplex.

Big Joe - If you liked Gander Mtn. selection I think you'd be amazed with Sportsman's Warehouse I thought it was head and shoulders above Gander Mtn. on fishing stuff (variety)

Posts: 427 | From: Waxahachie, TX, USA | Registered: Jun 2003 | IP: Logged | [Report Post](#)

Bass Champ
203
Angler

[Posted](#) 12-16-2004 01:21 PM 12-16-2004 01:21 PM [L](#) [E](#) [H](#) [M](#)

an_average_joe,
Thanks for letting me know!

Brian McCarty
 "Bringing A Dream - Home To You!"
 Ebby Halliday Realtors
 (214)683-7663
 brianmccarty@ebby.com

Posts: 352 | From: Frisco, TX, USA | Registered: May 2003 | IP: Logged | [Report Post](#)

scott01
 TFF Pro Angler

[Posted](#) 12-16-2004 01:28 PM 12-16-2004 01:28 PM [USA](#) [-E](#) [Y](#) " " " "

Sounds like I need to take a little road trip during lunch one day and visit Sportsmans Warehouse.

Posts: 1201 | From: Bedford | Registered: Jun 2002 | IP: Logged | [Report Post](#)

Base Champ
203
 Angler

[Posted](#) 12-16-2004 01:36 PM 12-16-2004 01:36 PM [USA](#) [-E](#) [Y](#) " " " "

Scott01,
 It will be well worth your while! I was amazed at the selection!

Brian McCarty
 "Bringing A Dream - Home To You!"
 Ebby Halliday Realtors
 (214)683-7663
 brianmccarty@ebby.com

Posts: 352 | From: Frisco, TX, USA | Registered: May 2003 | IP: Logged | [Report Post](#)

LargemouthSpec
 Outdoorsman

[Posted](#) 12-16-2004 07:46 PM 12-16-2004 07:46 PM [USA](#) [-E](#) [Y](#) " " " "

I really do not see how BPS stays in business. The Katy store has more boats everytime I go. The shelves are always full and it is really never full.

Never been to Sports. Warehouse.

Gander has a good tackle dept with the exception of the rods and reels.

My ranking...
 BPS=GM (I go to Gander since BPS is hell and gone from where I live.

Cut Rate tops them all!!!

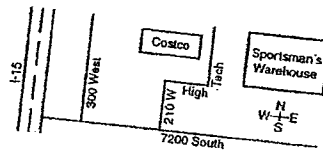
Jason

SPORTSMAN'S WAREHOUSE

Hunting • Fishing • Camping • Archery
Reloading • Marine • Outerwear • Footwear

Dale Smith

7035 South 185 West
Midvale, Utah 84047



(801) 566-6662 • Fax (801) 566-0128 • Vendors (801) 566-6681

1994/1995

Calling Card



7035 South 185 West, Midvale, Utah 84047

(801) 566-6662 • Fax (801) 566-0128

Vendors (801) 566-6681

1995/1996

Calling Card

WILLIAM BOME, MAY 16, 2006

1 32180AKW

2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
3 THE TRADEMARK TRIAL AND APPEAL BOARD

4 In the Matter of Trademark Registration No. 2,390,988

5 For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING
6 RELOADING OUTERWEAR FOOTWEAR and Design

7 Date Registered: October 3, 2000

8 Bass Pro Trademarks, L.L.C.,

9 PETITIONER,

10 vs.

11 Sportsman's Warehouse, Inc.,

12 RESPONDENT.

13
14 DEPOSITION OF WILLIAM BOME

15 May 16, 2006

16 Pursuant to Notice taken on behalf of the Petitioner, at
17 600 17th Street, Suite 1800, Denver, Colorado 80202, at
18 10:00 a.m., before Kelli J. Wessels, Registered
19 Professional Reporter and Notary Public within Colorado.
20
21
22
23
24
25

ORIGINAL

ESQUIRE DEPOSITION SERVICES - ST. LOUIS
314.621.6173 888.462.2780 FAX 314.621.1667

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 9

1 A. Yes.

2 Q. How long were you with the Colorado Springs
3 store?

4 A. Since November of 2005 till February, I think
5 February of 2006.

6 Q. Where did you go in February of 2006?

7 A. To Aurora.

8 Q. And what was your position initially when you
9 were transferred to Aurora?

10 A. Store manager.

11 Q. And that's your current position?

12 A. Yes.

13 Q. As of today, correct?

14 A. Yes.

15 Q. Can you describe for me your job duties as the
16 store manager of the Aurora location?

17 A. Opening and closing procedures for the front end,
18 inventory levels, a thing we call negatives.

19 Q. What are negatives?

20 A. Negatives that have to do with inventory.
21 Customer complaints, making sure my department managers
22 are doing their jobs.

23 Q. How many department managers do you supervise?

24 A. Ten. Ten total managers.

25 Q. And who do you report directly to?

1 A. Sportsman's Warehouse buys product in large
2 quantities that is sent to Pack Fly that is distributed,
3 DC center, between all the Sportsman's Warehouse stores.

4 Q. Do you have an understanding of -- we had just a
5 minute ago made a reference to the term retailer.

6 A. Okay.

7 Q. Do you have an understanding of what a retailer
8 is as opposed to a wholesaler?

9 A. Yes, a retailer is someone that sells to the
10 public at full retail prices.

11 Q. And Sportsman's Warehouse is a retailer; is that
12 correct?

13 A. Yes.

14 Q. Sportsman's Warehouse isn't a wholesaler,
15 correct?

16 A. No.

17 Q. Other than Pacific Flyway Wholesale, are there
18 any other wholesalers from whom Sportsman's Warehouse
19 purchases product?

20 A. Yes.

21 Q. Can you name some of the other wholesalers?

22 A. Gun-a-Rama, All Sports. There's a couple others
23 also.

24 Q. Okay. Just using those two examples, Gun-a-Rama
25 and All Sports, is it your understanding that those

1 Oh, no, it is on the verbiage of this card that kind of
2 conversation.

3 Q. These conversations that you had were they
4 separate conversations with each of these store managers?

5 A. Two were with -- one was with both Jason and Joel
6 and one was separate with Darren in the Springs.

7 Q. Okay on. When did the conversation with the
8 Thornton manager and the Littleton manager take place?

9 A. Yesterday.

10 Q. Did you have this discussion with them in person?

11 A. Yes.

12 Q. Was your counsel present during that discussion?

13 A. Yes.

14 Q. I won't ask you any more questions about that.

15 The conversation you had with Darren, was that
16 also a conversation you had yesterday?

17 A. Yesterday.

18 Q. Prior to that time, did you ever have any similar
19 conversations with these store managers?

20 A. No.

21 Q. Prior to yesterday, did you have any knowledge of
22 this confusion caused by the Bass Pro gift cards?

23 A. One occurrence while fishing in Oregon. I had
24 started working for Sportsman's Warehouse, proudly wore
25 the Sportsman's Warehouse shirt and somebody comes up to

1 me and was, oh, Sportsman's Warehouse, started talking
2 about it. Did you know it is owned by Bass Pro? No, it
3 is not.

4 Argument ensues and the gentleman got out a card
5 that had on the very back of the card, can be redeemed at
6 Outdoor World, Bass Pro Shops and then on a separate line
7 Sportsman's Warehouse.

8 Q. So if my understanding is correct you had a
9 Sportsman's Warehouse shirt on?

10 A. Right.

11 Q. A gentleman thought the Sportsman's Warehouse
12 displayed on your shirt was in fact the Sportsman's
13 Warehouse in fact owned by Bass Pro; is that correct?

14 A. And it brought up a conversation of, did you know
15 Sportsman's Warehouse was owned by Bass Pro.

16 Q. That was the statement that the gentleman made to
17 you?

18 A. Yes.

19 Q. Do you recall roughly when that conversation
20 occurred?

21 A. It was in the winter of 2003.

22 Q. And what was your position with Sportsman's
23 Warehouse at that time?

24 A. I was a fishing associate.

25 Q. Did you ever report the substance of this

1 32180CKW

2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
3 THE TRADEMARK TRIAL AND APPEAL BOARD

4 In the Matter of Trademark Registration No. 2,390,988

5 For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING
6 RELOADING OUTERWEAR FOOTWEAR and Design

7 Date Registered: October 3, 2000

8 Bass Pro Trademarks, L.L.C.,

9 PETITIONER,

10 vs.

11 Sportsman's Warehouse, Inc.,

12 RESPONDENT.

13
14 DEPOSITION OF JOEL MICHAEL McRAE

15 May 16, 2006

16 Pursuant to Notice taken on behalf of the Petitioner, at
17 600 17th Street, Suite 1800, Denver, Colorado 80202, at
18 2:11 p.m., before Kelli J. Wessels, Registered
19 Professional Reporter and Notary Public within Colorado.
20
21
22
23
24
25

ORIGINAL

1 A. A gentleman named Gary Watts.

2 Q. Okay. How long were you the hunting department
3 manager in the Aurora location?

4 A. Through July of 2005.

5 Q. Okay. Where did you go in July of 2005?

6 A. Littleton, Colorado, Sportsman's Warehouse.

7 Q. And what position did you assume in Littleton in
8 July of 2005?

9 A. Store manager.

10 Q. And is store manager the Littleton, Colorado,
11 Sportsman's Warehouse your current job?

12 A. Correct.

13 Q. Are there department managers that report
14 directly to you at the Littleton location?

15 A. Yes.

16 Q. How many department store managers report to you?

17 A. Eight.

18 Q. How does the size of the Littleton store compare
19 to the size of the Aurora location, just roughly square
20 footage-wise?

21 A. As far as I know they are the same.

22 Q. Okay.

23 A. I'm not certain.

24 Q. But one is not twice as big as the other, they
25 are pretty close?

1 Q. What is your understanding of what a wholesaler
2 is?

3 A. They sell to businesses rather than on an
4 individual basis.

5 Q. Okay. Is it your understanding that businesses
6 that actually sell to the end users or the customers would
7 be a retailer as opposed to a wholesaler?

8 A. Correct.

9 Q. So Pacific Flyway is not a retailer, right?

10 A. They are not.

11 Q. And Sportsman's Warehouse is a retailer; is that
12 correct?

13 A. That's correct.

14 Q. And Sportsman's Warehouse is not a wholesaler; is
15 that right?

16 A. That's right.

17 Q. At any time, have you ever been provided any
18 instruction regarding the appropriate use of Sportsman's
19 Warehouse logos?

20 A. No.

21 Q. You never received any communications giving you
22 any guidelines in terms of what you can and can't do with
23 respect to the use of Sportsman's logos?

24 A. I have -- I have seen an e-mail.

25 Q. Okay. And was that a recent e-mail that made

1 and hats that your store uses, would they all only use the
2 logo that you referred to as the one with the mountain in
3 the background?

4 A. I would say that they use both of them.

5 Q. Both of them being the new oval shaped design?

6 A. That's correct.

7 Q. Do you know if any T-shirts or hats at your store
8 use the oval design with the little circled R next to it?

9 A. I don't know that.

10 Q. You've never had someone call you and say, quit
11 handing out the T-shirts and hats with the logo with the
12 circled R on it?

13 A. I have not.

14 Q. Have you ever been instructed to change any of
15 the Sportsman's Warehouse logos that are displayed in any
16 of these advertising mediums that we just discussed?

17 A. No.

18 Q. Were you aware of any instances where your
19 store's customers have been mistaken with respect to
20 Sportsman's Warehouse versus Bass Pro Shops Sportsman's
21 Warehouse?

22 A. Yes.

23 Q. How many such instances are you aware of?

24 A. Just one.

25 Q. How did you find out about that instance?

1 A. Woman at the cash register attempting to pay for
2 her merchandise with a Bass Pro gift card.

3 Q. Were you physically present at the time the
4 customer attempted to use the Bass Pro gift card?

5 A. Yes.

6 Q. What exactly did -- did the customer say anything
7 to you at that time?

8 A. She wasn't specific.

9 Q. Actually, can you just explain to me just more
10 specifically what happened in that instance?

11 A. She came to the register with merchandise in a
12 basket. Upon ringing all the merchandise up she pulled a
13 Bass Pro gift card from her wallet to use for purchase. I
14 politely explained to her that we are two different
15 companies and she would have to pay with another means.
16 She said, okay, and pulled a credit card out and paid for
17 it with that.

18 Q. So basically she just said okay and put it away?

19 A. I can't assume what she was thinking but, yeah.

20 Q. I just want to make sure there wasn't anything
21 else that she said?

22 A. I don't remember --

23 Q. Okay.

24 A. -- if there was anything else.

25 Q. She didn't, like, complain about being confused?

1 32180BKW

2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
3 THE TRADEMARK TRIAL AND APPEAL BOARD

4 In the Matter of Trademark Registration No. 2,390,988

5 For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING
6 RELOADING OUTERWEAR FOOTWEAR and Design

7 Date Registered: October 3, 2000

8 Bass Pro Trademarks, L.L.C.,

9 PETITIONER,

10 vs.

11 Sportsman's Warehouse, Inc.,

12 RESPONDENT.

13
14 DEPOSITION OF JASON PEREZ

15 May 16, 2006

16 Pursuant to Notice taken on behalf of the Petitioner, at
17 600 17th Street, Suite 1800, Denver, Colorado 80202, at
18 12:39 a.m., before Kelli J. Wessels, Registered
19 Professional Reporter and Notary Public within Colorado.
20
21
22
23
24
25

ORIGINAL

1 assistant store manager to Don Thomas.

2 Q. Okay.

3 A. After Boise I went to Loveland as a store manager
4 for two, two and a half years, somewhere right in there.

5 Q. You were the store manager at that time?

6 A. Yes, sir.

7 Q. It sounded like -- strike that.

8 Do you recall roughly what year you were
9 transferred to the Loveland store?

10 A. Well, I was in Riverdale in 1999. 2000 I was in
11 Boise. 2001, August -- actually, it was just the end of
12 July I moved to Loveland of 2001.

13 Q. How long were you at Loveland?

14 A. Like I said, between two, two and a half years.
15 Just over two years.

16 Q. So that takes us, I think, to mid to late 2003;
17 is that right?

18 A. Yeah.

19 Q. Where did you go at that time?

20 A. After that to the Thornton store.

21 Q. What was your position at the Thornton store?

22 A. Store manager.

23 Q. Is that your current title now?

24 A. Store manager at the Thornton store. Yes, sir.

25 Q. Can you briefly describe your job

1 Q. What's your understanding of what that business
2 is?

3 A. Pacific Flyway is a wholesale company. Basically
4 that's what Pacific Flyway is.

5 Q. When you say it is a wholesale company, what do
6 you mean by that?

7 A. They buy goods wholesale. So they would
8 basically be able to buy those and then in turn we're able
9 to order them from -- Sportsman's orders the product from
10 Pac Flyway.

11 Q. So is it fair to say that Pacific Flyway
12 Wholesale is a wholesaler that sells product to retailers?

13 A. To retailers, mm-hmm, that is fair to say.

14 Q. Is it your understanding that Sportsman's
15 Warehouse -- the Sportsman's Warehouse locations including
16 the ones where you have worked are retailers as opposed to
17 wholesalers?

18 A. Retailers.

19 Q. Okay. And to the best of your knowledge, have
20 the Sportsman's Warehouse locations, have they been
21 retailers since the start of the first retail location?

22 A. Yes.

23 Q. Sportsman's Warehouse has never been in the
24 business of selling wholesale products, right?

25 A. No.

1 year. It has been at least two years ago, maybe even
2 three. I don't know. It was the first time that we saw
3 those logos.

4 Q. During that meeting that you just referenced, was
5 there any explanation as to why there would be a change
6 from the old logo to the new logo?

7 A. Ryan just came out and just said, hey, what do
8 you think? He said, hey, I thought this Sportsman's
9 Warehouse -- we've had this logo for so long now, just
10 thought it would add a little zip to it. We all agreed we
11 thought the logo was something that was new and fresh.
12 That was basically all he presented in that text -- in
13 that context and wanted the opinion of the store managers.

14 Q. Are you aware of any instances where a customer
15 has come into your store and expressed some confusion
16 between your Sportsman's Warehouse and the Bass Pro Shops
17 Sportsman's Warehouse?

18 A. I've experienced that before, yes.

19 Q. How many times do you recall that that happened?

20 A. Are you talking about a specific place or overall
21 you just want to know?

22 Q. Just overall how many times. And I guess I'm
23 just talking about right now the store you are at, so
24 going back to 2003.

25 A. 2003 at least a handful of times. Five --

1 anywhere from five to ten times that I can recall myself
2 handling something like that.

3 Q. Okay. Five to ten times going back from October
4 of 2003 to the present; is that correct?

5 A. Yes, sir.

6 Q. Actually, let me back up a little bit. Does your
7 store have a policy with respect to handling customer
8 complaints?

9 A. (Deponent nods head.)

10 Q. What's your store's policy for dealing with
11 customer complaints?

12 A. Basically if a complaint arises if I'm present in
13 the store I take care of every one of the complaints,
14 every complaint. If I'm not present the assistant in
15 charge will take care of it on my behalf as far as any
16 complaints that go on. There is always someone in charge
17 that would take care of that in my absence.

18 Q. Okay. If you're not in the store and there's
19 another manager who takes care of a customer complaint,
20 once that complaint is resolved, would the department
21 manager then report that to you?

22 A. Every time.

23 Q. So even if you are not involved in resolving the
24 complaint, someone else takes care of it, they still
25 report each and every complaint to you directly?

1 an actual complaint, a frustration of some sort, unless
2 the customer just leaves and doesn't allow that, I am
3 brought into it unless I am not there and then someone
4 else takes care of that on my behalf.

5 Q. In the instances that I asked you about before
6 where a customer has brought in a Bass Pro Shops gift card
7 and tried to redeem that --

8 A. I was going to say you never asked me that
9 before.

10 Q. I think I asked you whether any customers came
11 into your store and were confused in terms of the
12 relationship between Sportsman's Warehouse versus Bass Pro
13 Shops Sportsman's Warehouse and you said there were five
14 to ten instances where that may have occurred?

15 A. Yes.

16 Q. Did I understand your testimony correctly?

17 A. Mm-hmm.

18 Q. In those instances where a customer has voiced
19 that confusion, is that something that customer service
20 people are required to report to you or is that something
21 they can take care of themselves?

22 A. The first time that it come up or it arose,
23 obviously we had to figure out something in a plan as far
24 as what we want to let the customer know.

25 Q. And what did you decide to do that first time?

1 A. Basically what happened is the customer wanted to
2 redeem the gift card and our employee said we don't accept
3 those cards. That card is not affiliated with our store.
4 And I think the customer just wanted to know a little bit
5 more why because it did say Sportsman's Warehouse on it.

6 And then I just came down and explained to them
7 that we were two different entities. Sportsman's
8 Warehouse and Bass Pro Shop are a separate business. I
9 just simply explained that Bass Pro Shop has Sportsman's
10 Warehouse by Bass Pro Shop and that is to be used at their
11 locations where they are accepted.

12 Q. So you spoke directly with the customer?

13 A. Every one of them if I'm there I speak to them
14 myself.

15 Q. Okay. Do you recall roughly when that first
16 instance occurred, the one you just described?

17 A. I don't remember any dates as far as the first
18 time it happened at the Thornton location, no.

19 Q. Would it have been more than a year ago?

20 A. The first one?

21 Q. Yes.

22 A. Yes.

23 Q. Do you think it would have been more than two
24 years ago?

25 A. At the Thornton location?

1 Q. Yes.

2 A. It would have been probably -- it would have been
3 probably two years ago. Somewhere within that first year.

4 Q. Do you recall specifically what -- well, strike
5 that.

6 Did the customer actually explain the situation
7 to you before you offered a response?

8 A. I don't recall exactly to be honest with you what
9 happened. I just know -- I don't ever recall what the
10 outcome was on that.

11 Q. You don't remember anything specifically that the
12 customer said to you?

13 A. Most of them are the same thing every time. It
14 says Sportsman's Warehouse on here, why can't we use this
15 card here. This is -- you know, it is not.

16 Q. And a moment ago you said that every time you've
17 been present you've personally addressed the customer and
18 explained the situation; is that right?

19 A. Every time I was able to get down there I was
20 always down there to tell them.

21 Q. Are you aware of whether it is possible that
22 there were other similar occurrences of this confusion
23 when you were not present at the store?

24 A. There has been a couple of times.

25 Q. Do you know who handled those situations in your

1 them know we are not affiliated with the Bass Pro Shops.
2 We are Sportsman's Warehouse and they are Bass Pro Shops
3 and some of their stores are Sportsman's Warehouse by Bass
4 Pro Shops. We're two different identities, so -- best
5 possible way. Customers obviously -- some might
6 understand, some might not. We just try to be -- we try
7 to present it the same way every time. So basically it
8 was just the presentation I was looking for.

9 Q. Other than the presentation of Bass Pro gift
10 cards at the Loveland store back in 2001 to 2003 time
11 frame, were you aware of any other instances of customer
12 confusion between Sportsman's Warehouse and Bass Pro Shops
13 Warehouse -- Sportsman's Warehouse, excuse me, at the
14 Loveland store?

15 A. No, no other instance.

16 Q. Other than the instances of customer confusion
17 that we discussed with respect to the Loveland store and
18 the Thornton store, are you aware of any other similar
19 instances at any other Sportsman's Warehouse locations?

20 A. Yes. Meridian, Idaho, was the first incident
21 that I was ever aware of.

22 Q. And we talked about that one earlier, correct?
23 That is the one you mentioned earlier?

24 A. That was the magazine.

25 Q. Okay. Is it possible there may have been other

May 10, 2006

BASS PRO TRADEMARKS, LLC. v. SPORTSMAN'S WAREHOUSE, INC.

DALE R. SMITH

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BASS PRO TRADEMARKS,)	
L.L.C.,)	
)	Cancellation No. 92045000
Petitioner,)	
)	
vs.)	Deposition of:
)	DALE R. SMITH
SPORTSMAN'S WAREHOUSE,)	
INC.,)	
)	
Respondent.)	

May 10, 2006
10:00 a.m.

Sportsman's Warehouse
7035 High Tech Drive
Midvale, UT 84047

Sharon Morgan, CSR, RPR, CRR
Notary Public in and for the State of Utah

GARCIA & LOVE
801.538.2333

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 12

1 P R O C E E D I N G S

2 DALE R. SMITH,

3 called as a witness on behalf of the petitioners,
4 being duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MR. UPCHURCH:

8 Q. Would you state your name for the record,
9 sir.

10 A. Dale R. Smith.

11 Q. Mr. Smith, are you currently employed by
12 Sportsman's Warehouse?

13 A. Yes.

14 Q. What's your position with Sportsman's
15 Warehouse?

16 A. President.

17 Q. How long have you been with Sportsman's
18 Warehouse?

19 A. Since 1991, March of '91.

20 Q. What was the name of the company at that
21 time?

22 A. Sports Warehouse.

23 Q. Was the business of Sports Warehouse
24 substantially the same as the business of Sportsman's
25 Warehouse?

1 Loveland.

2 Q. What did they say? What did the fellow in
3 Memphis say?

4 A. He just said at the time that it was causing
5 a little confusion, that they received a gift card. I
6 said, "Don't let the customers go away. Give them a
7 free hat, but we can't accept the gift card." And I
8 had a similar conversation with Brian Mackey in
9 Loveland.

10 Q. Have you had any other conversations with
11 store managers concerning Bass Pro and customers being
12 confused?

13 A. No.

14 Q. If you look on page 5, at the top -- and
15 you're welcome to look on the previous page to see
16 what the interrogatory was, if you want to.

17 A. Okay.

18 Q. What I'm interested in is the sentence that
19 starts, "Although Sportsman's Warehouse formally
20 changed the name on the store's sign to Sportsman's
21 Warehouse during 1995, respondent believes it had been
22 using the mark Sportsman's Warehouse prior to 1995."
23 Do you see that statement?

24 A. Uh-huh (affirmative).

25 Q. Do you know of any documents that show the

1 use of the mark Sportsman's Warehouse by your company
2 prior to 1995?

3 A. Documents, no.

4 Q. Do you know if Sportsman's Warehouse has
5 looked for such documents?

6 A. Yes, we have looked.

7 Q. Do you know what formed the basis of the
8 belief referred to in that sentence that Sportsman's
9 Warehouse had been using that mark prior to 1995?

10 A. Probably just that it was talked about. I
11 mean, we know it was spring of '95 sometime, but
12 trying to narrow down a date -- but it was talked
13 about prior to '95, yes, on the name change.

14 Q. Okay. And who would have talked about
15 changing the name prior to 1995?

16 A. Well, I remember talking with customers about
17 it on the sales floor.

18 Q. Okay. What did the customers say?

19 A. They would come in and say, how come you
20 don't carry baseball? That's a sport. How come you
21 don't carry golf? That's a sport. You ought to be
22 called Sportsman's Warehouse. I was very happy when
23 we changed the name.

24 Q. Because you didn't have to have that
25 conversation again?

1 interrogatory No. 19 and the top of 16, it talks about
2 in-store signage.

3 A. Okay.

4 Q. Has Sportsman's Warehouse, to your knowledge,
5 been able to locate documents showing advertising or
6 in-store signage as early as 1994?

7 A. We have not obtained that, no.

8 Q. So that's similar to the question I asked you
9 previously about documents that had Sportsman's
10 Warehouse on it?

11 A. Correct.

12 Q. Why don't we -- would you mind taking a
13 break, and maybe we could find that and get rid of
14 that one subject?

15 MR. ALLGEYER: Okay.

16 MR. UPCHURCH: Because I'm not sure we're
17 going to go very long after lunch. So maybe it makes
18 sense to do it now.

19 MR. ALLGEYER: Yes, that would be fine.

20 (Recess from 11:09 a.m. to 11:16 a.m.)

21 (Exhibit No. 3 marked.)

22 Q. (By Mr. Upchurch) I'm going to hand you what
23 has been marked as Exhibit 3 and ask if you can
24 identify that, please.

25 A. Yes.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-oo0oo-

In the matter of Trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING
CAMPING RELOADING OUTERWEAR FOOTWEAR and Design
Date registered: October 3, 2000

BASS PRO TRADEMARKS,
LLC,

Petitioner,

vs.

SPORTSMAN'S WAREHOUSE,
INC.,

Respondent.

:
:
: DEPOSITION OF:
:
: STUART UTGAARD
:
: Cancellation No.
: 92045000
:
:
:
:
:

-oo0oo-

May 11, 2006
10:15 a.m.

Location:
Sportsman's Warehouse, Inc.
7035 High Tech Drive
Midvale, Utah

Reporter: Jeanette Lund, CSR, RPR, and
Notary Public in and for the State of Utah

P R O C E E D I N G S

STUART UTGAARD,

called as a witness for and on behalf of the petitioner,
being first duly sworn, was examined and testified as
follows:

EXAMINATION

BY MR. UPCHURCH:

Q Would you state your name for the record,
please?

A Stuart Brady Utgaard.

Q Mr. Utgaard, are you an officer of Sportsman's
Warehouse?

A Yes.

Q What position do you hold at Sportsman's
Warehouse?

A Chairman and chief executive.

Q How long have you held that position?

A Well, I bought the company on November 1 of
1996, and at that time I was president and chairman.
And for the first three years, I was essentially the
only officer, then I made several other people vice
presidents, president, and I became chief executive. So
I don't know. I guess I've been chief executive
basically functionally always, but in terms of title,
since probably 1998 or so, '99. I don't know.

1 A No.

2 Q Who by title would be involved in the
3 selection of new trademarks or service marks?

4 A It would depend on what the product was that
5 we're going to do. If it's a corporate matter, I would
6 be, or Dale or both of us. If it's on a product, that
7 would probably -- could originate from a buyer, it could
8 originate from a vice president over that area of
9 operations, anybody.

10 Q But for something like a store name, that
11 would be you and possibly Mr. Smith?

12 A All of our store names have always been
13 Sportsman's Warehouse.

14 Q Right. Except when you -- oh, okay. Let me
15 ask another question. At one point, did you change the
16 corporate name from Sports Warehouse to Sportsman's
17 Warehouse?

18 A When I acquired the business, it was legally
19 incorporated as Sports Warehouse, but they were planning
20 to change the name to Sportsman's Warehouse. And -- or
21 had changed the name to Sportsman's Warehouse, so that
22 was November 1 of '96. I guess they had already changed
23 it the previous year.

24 In 1992, they hired me to sell their company
25 and I was unsuccessful in my attempts to do it, but in

1 the winter I would come out and go skiing and so on, so
2 I knew that they had been talking about changing the
3 name. They changed it, you know, sometime -- they
4 registered to change it on January 1 of -- I think it
5 was 1995.

6 Q And we have some documents later on that you
7 can look at.

8 A January -- February 1 of 1995, sorry.

9 Q Rather than --

10 A That's when they did it, February 1 of 1995.
11 That's a state filed document, but they had been
12 discussing it, obviously, before that.

13 Q And when you say "they," you are talking
14 about?

15 A Scott Nielson and Bill Hayes, primarily, and
16 also Dale Smith.

17 Q And you said they changed the name in '95. I
18 believe they may have changed the store name but not the
19 corporate name in '95?

20 A Right. It was always -- it was Sports
21 Warehouse dba Sportsman's Warehouse.

22 Q Because Exhibit 2, for example, shows that the
23 owner is Sports Warehouse and that was filed some years
24 later?

25 A Yes. After a while -- I mean, there became --

1 Q Did you provide the law firm with the
2 information that's shown on the registration, like the
3 logo itself and the description of the goods and the
4 date of first use?

5 A Dale Smith designed the logo, and the
6 information on here on the date of first use is
7 June 16th, 1995. I think at the time that that was the
8 only ad that we could find, so that's why -- that is the
9 date of first use, although it was obviously used before
10 that because right after the first of the year, they
11 changed the sign on the building and changed signs in
12 the store.

13 Q Right after the first of 1995?

14 A Right -- yeah, in January of 1995, and they
15 registered their name with the state on February 1 of
16 '95.

17 Q Do you know of any documents that show that
18 the signs were changed in January of 1995?

19 A Which signs?

20 Q On the stores.

21 A I don't believe it was changed in January. I
22 think it was probably changed in February or March, to
23 my knowledge, and we've been, I guess, trying to find
24 out the date, but...

25 Q Do you know if any searching was done before

1 A I don't recall that.

2 Q Independent of Mr. Burroughs, do you recall a
3 situation where people were trying to redeem Bass Pro
4 gift cards at Sportsman's Warehouse locations?

5 A I think it was 2000 we had opened a store in
6 Loveland, Colorado, and somewhere around that time Bass
7 Pro Shop opened a store in St. Louis, Missouri, and they
8 called it Bass Pro Shops Sportsman's Warehouse. And
9 when they first opened that store, there were probably
10 two or three instances of people that were confused,
11 said they thought we had opened a store in St. Louis,
12 and a couple had been, you know, into our Loveland store
13 and thought they were affiliated and so on. You know,
14 that rapidly became known that that was not the case and
15 disappeared, so I don't know. But I recall at that time
16 that there was very minor confusion in Loveland thinking
17 that we owned the store in St. Louis.

18 Q Do you know if there was also a confusion like
19 that in Memphis?

20 A I would anticipate that there was some.
21 Unfortunately, as you may have heard, Bob Goodwin, our
22 store manager there, was killed in a car accident
23 Saturday evening, died early Sunday morning, so I
24 don't -- he would be more familiar with it than I was,
25 but I'm sure there was some.

1 A Yes.

2 Q Do you consider Bass Pro Shops to be a
3 competitor?

4 A Yes.

5 Q Are there similar products sold in your stores
6 and the Bass Pro Shops stores?

7 A Yes.

8 Q Are there product types that Bass Pro sells
9 that you don't sell?

10 A Yes.

11 Q What are some of those, the big ones?

12 A Golf equipment.

13 Q Anything else?

14 A Boats. Big boats.

15 Q I was going to say, I could have sworn I saw
16 some boats over there yesterday.

17 A We sell some v-hauls and kick boats and things
18 like that, but I'm talking about like pontoon boats,
19 Tahoe boats, bass tracker boats. We're selling small
20 boats. They're selling more major boats.

21 Q Yeah, okay, I understand the distinction now.

22 Any other products that Bass Pro sells that
23 Sportsman's Warehouse does not, product categories?

24 A In terms of -- I think they sell fudge, and I
25 don't think we sell fudge. We might sell fudge in one

1 and commissioner of patents and trademarks for the mark
2 Sportsman's Warehouse.

3 Q I take it you didn't prepare this document?

4 A No.

5 Q On the first page of this document, you see a
6 date of first use specified as June 16th, 1995?

7 A Yes, and that relates again to the first
8 newspaper advertising -- advertisement that we could
9 find.

10 Q That would be the Father's Day ad you talked
11 about earlier?

12 A Yes.

13 Q At the time that you signed Exhibit 14, were
14 you aware of any earlier use of the mark?

15 A Of which mark?

16 Q The one that's shown in Exhibit 2.

17 A Sure -- I mean, earlier than December 16th,
18 1998?

19 Q Early than June 16th, 1995.

20 A Not in the -- you know, we didn't have a
21 newspaper thing, but we were using it on the side of the
22 building for sure by then in terms of our sign on the
23 old building that was out here.

24 Q When was it used on the sign on the building?

25 A Well, that's -- we're trying to track that

1 down, but we think that it was February or March of
2 2000 -- or 1995.

3 MR. ALLGEYER: You mean 1995, not 2000.

4 THE WITNESS: Yes, February or March of 1995,
5 the sign on the exterior of the building was changed.
6 And inside the building, I think signage started to be
7 changed right after the holiday season that year when
8 they hit into January. But, you know, they didn't --
9 that's in-store signage, so -- you know, we've
10 changed -- just two years ago we changed all of our
11 in-store signage again. It used to say Sports
12 Warehouse, it still does, but the stuff on the sign
13 changed. When I started working on the project, the
14 in-store signage above the cash wraps was Sportsman's
15 Warehouse. In the report that we prepared showed
16 Sportsman's Warehouse as the dba.

17 Q (BY MR. UPCHURCH) Right. At the bottom of
18 Page 1 of Exhibit 14 there are various disclaimers.
19 There's a section called "Disclaimers."

20 A Yes.

21 Q Do you have an understanding as to what
22 disclaimer means in the trademark context?

23 A I believe so.

24 Q And what is that understanding?

25 MR. ALLGEYER: With the understanding that

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BASS PRO TRADEMARKS, L.L.C.,))
)
PETITIONER,))
)
VS.)	CANCELATION NO. 92045000
)
)
SPORTSMAN'S WAREHOUSE, INC.,))
)
)
RESPONDENT.))

DEPOSITION
OF
JAMISON BRYAN HENSLEY
THURSDAY, JUNE 1, 2006

ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, TN 38103
901-523-8974
www.alphareporting.com

1 manager?

2 A. Initially I was in-store logistics manager over
3 the receiving process, the freight door process. I
4 had about 80 to 100 associates underneath me and four
5 salaried managers.

6 Q. And where were you located at Target?

7 A. Initially I was here in Memphis, and I got
8 relocated to the Atlanta market.

9 Q. When did you relocate to Atlanta?

10 A. Back in 2002.

11 Q. Were you a logistics manager in Atlanta as
12 well?

13 A. Yes.

14 Q. Did you have any further positions with Target?

15 A. No.

16 Q. When did you leave Target?

17 A. I left Target April 28, of 2003.

18 Q. Did you take another job at that time?

19 A. With Bass Pro Shops.

20 Q. And where did you begin working with Bass Pro
21 Shops?

22 A. Here in the Memphis market.

23 Q. And what was your title?

24 A. I was the assistant store manager.

25 Q. Did you begin working at Bass Pro Memphis, the

1 Memphis store when it opened, or after?

2 A. No, sir, after it opened.

3 Q. How long had it been opened?

4 A. I believe it had been open about ten months.

5 Q. What were your duties as assistant store
6 manager?

7 A. I had four salaried manager -- I'm sorry. At
8 the time I started, I had six salaried underneath
9 myself, day-to-day operations. I was assistant to
10 Jim Osborne.

11 I was responsible for budgeting expense
12 control, payroll leveraging, payroll management
13 throughout the store, all merchandising, and
14 operations issues from day to day.

15 Q. What did you do in terms of merchandising?

16 A. Day-to-day communication with buyers over each
17 area. Adjusting features inside the store. Bringing
18 new market-specific product, making sure the store
19 was properly merchandised.

20 Q. Did that include signage?

21 A. Yes.

22 Q. How long were you in that position?

23 A. I'm still in the position right now. They've
24 actually changed the name of the position, but I'm
25 still in my current position.

1 Q. And what is the current name of the position?

2 A. It's the merchandising manager.

3 Q. Can you describe THE different management
4 positions in the Memphis store currently?

5 A. The different positions in the store?

6 Q. Yes.

7 A. Right now I've four GS's underneath me, group
8 sales managers. And they're over several -- over
9 four different areas. We've combined departments
10 inside of each area.

11 We've got a receiving manager, obviously over
12 the receiving piece. And we've also got a front-end
13 manager that's over the front-end cash office
14 day-to-day operations.

15 Q. And are there other people at the same level as
16 you, other positions?

17 A. There's an operations manager that's currently
18 equal to me.

19 Q. What are the duties of an operations manager?

20 A. He's over the receiving manager, and he's also
21 over the front-end manager.

22 Q. Then is there a general manager?

23 A. Yes, there is.

24 Q. Who is the general manager?

25 A. Hayden Holly.

1 A. Well, at the time we didn't have an
2 administrative manager, so I did it weekly.

3 Q. In any given week did you put more than ten
4 comments?

5 A. Oh, yeah.

6 Q. On the spreadsheet?

7 A. Oh, yeah.

8 Q. More than 20?

9 A. Most definitely.

10 Q. More than 100.

11 A. I'd say, you know, 100 to 200 a month, maybe.
12 That's an estimation. I really don't know how many
13 she's doing right now.

14 Q. You mentioned that you'd received complaints
15 and concerns from customers, I assume both orally and
16 in writing, about the similarity between the two
17 companies' names.

18 A. I didn't receive anything in writing. The
19 store did.

20 Q. Okay. Can you describe some of those concerns
21 and complaints?

22 A. Oh, I've had multiple complaints where
23 customers have come in and they wanted to take the
24 receipt from the other Sportsman's Warehouse and add
25 their purchase to our reward system, which,

1 obviously, we couldn't do.

2 I've had people to come in to apply for
3 positions at our location asking for a position at
4 our Winchester location, which obviously we do not
5 have, due to the confusion on the ads they'd put out
6 in the newspaper.

7 I've had customers come in and try to return
8 products with a receipt from the Winchester Road
9 location under the impression that they're at the
10 same place.

11 I have had customers call and complain about
12 the service they received at the Winchester Road
13 location, thinking that we are the same company.

14 I have had customers bring their coupons in out
15 of the newspaper.

16 Q. Any others?

17 A. That's part much a brief summary.

18 Q. Could you describe your reward system?

19 A. The way the reward system works is, the
20 customer makes certain purchases depending on the
21 time of the month and what we're running, whether
22 we're running double awards points or not. And they
23 get point on an account under their name and phone
24 number, and they're eligible to use those towards
25 merchandise in the store, once they've built up \$10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BASS PRO TRADEMARKS, L.L.C.,)	COPY
)	
PETITIONER,)	
)	
VS.)	
) CANCELATION NO. 92045000	
)	
)	
SPORTSMAN'S WAREHOUSE, INC.,)	
)	
RESPONDENT.)	

DEPOSITION
OF
JAMES OSBORNE
THURSDAY, JUNE 1, 2006

ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, TN 38103
901-523-8974
www.alphareporting.com

1 **We restructured the company right around there.**

2 Q. And what was your next position?

3 **A. Assistant store manager.**

4 Q. Okay. How long were you an assistant store
5 manager?

6 **A. About a year. About a year, if I'm not**
7 **mistaken. I'd have to go back and look at my**
8 **resume.**

9 Q. This is all still in Chicago in Schaumburg?

10 **A. Yeah, well, Chicago Gurnee, with Bass Pro.**

11 Q. How do you spell Gurnee?

12 **A. G-U-R-N-E-E.**

13 Q. And what was your next position in Chicago?

14 **A. Store manager. I moved to Memphis to be the**
15 **store manager.**

16 Q. And what date did you do that?

17 **A. 2002, February.**

18 Q. How long were you the store manager?

19 **A. Until August of 2005.**

20 Q. Did you open the Memphis store?

21 **A. Yes.**

22 Q. And in August of 2005, where did you move to?

23 **A. Sevierville, Tennessee to open a store there.**

24 Q. And your current position?

25 **A. General manager.**

1 companies.

2 Q. Okay. Do you recall if Pete Perkins took any
3 actions to address the situation?

4 A. I don't know exactly what Pete did or didn't
5 do.

6 Q. Did he give you any instructions?

7 A. Pete informed me to make sure that we were
8 taking care of our customers. And that we were, you
9 know, if customers had questions concerning the two
10 companies, that we were explaining the differences
11 between the two companies.

12 Once the companies open -- once that store
13 opened, we had a lot of confusion with our
14 customers. Our customers knew us as Sportsman's
15 Warehouse, and would bring in coupons, would come in
16 looking with their tabs looking for products.

17 We dealt with we have a rewards program, we had
18 customers bringing in their receipts to get points.
19 Customers taking our ads into their locations looking
20 for goods.

21 We had customer complaints. We had prior to
22 the store opening, customers coming say, oh, I hear
23 you're opening another store in the market. Why are
24 you opening another store on Winchester? And we had
25 to -- obviously that was -- we had to explain to them

1 **at that point that was not our company.**

2 Q. We'll get into some of that later.

3 **A. Okay.**

4 Q. Did you and Pete Perkins at any point discuss
5 changing the name of the Memphis Bass Pro Store?

6 **A. We discussed changing the sign on the wall of**
7 **the store.**

8 Q. And what was the nature of that discussion?

9 **A. Just what to do to differentiate ourselves for**
10 **our customers because of the confusion.**

11 Q. Did you come up with a plan?

12 **A. I gave information. He obviously took action,**
13 **because the sign was changed. He communicated it to**
14 **the next level, to my understanding.**

15 Q. Who was that? Do you know who he communicated
16 that to?

17 **A. I believe it was the vice president. I'm not**
18 **sure what he communicated and how he communicated it.**

19 Q. Did he copy you on e-mails between corporate
20 individuals?

21 **A. I don't recall what all he copied me on.**

22 Q. You indicated the sign was changed. When was
23 the sign changed?

24 **A. I believe it was in July.**

25 Q. And what was the sign changed to reflect?

1 **A. To my knowledge, Sportsman's Warehouse.**

2 Q. During the time you were at the Memphis store
3 as general manager, did you have customer complaints
4 or concerns about the similarity between your store
5 name and the respondent's Sportsman's Warehouse store
6 name?

7 **A. Yes.**

8 Q. Can you tell me what types of complaints or
9 concerns you had or you heard about?

10 **A. I touched on before. We had complaints from**
11 **advertising confusion. Our customers was bringing in**
12 **their tabs to our store, their coupons into our store**
13 **to be redeemed.**

14 There was rewards points. We have, like I
15 said, a rewards program. The customer wanted to get
16 their receipt points from us for their receipts.

17 We had confusion from the standpoint of our
18 customers would say I was at your other store, and
19 they didn't have this, and you have it in your ad.

20 Or we would have them bring in the flier, I
21 want this product, and we don't carry it. And it was
22 Sportsman's Warehouse's ad.

23 We had, I was at your other store -- and we had
24 confusion prior to opening when Sportsman's Warehouse
25 did their mass hire. We had people coming or calling

1 us concerning what time the mass hire was. We had
2 that confusion.

3 We had we would run an ad and we had the people
4 call us, I stopped by and put in an application at
5 your store on Winchester, why haven't I got a phone
6 call back?

7 And then we had customer issues where Jim --
8 I've had customers come in and tell me that, oh, I
9 was at your other store yesterday, and I need, you
10 know, I didn't see this. Why aren't you stocking it
11 at your other store?

12 Q. Did you have a policy in place to deal with
13 customer complaints and concerns such as these?

14 A. We addressed them, you know explained the
15 differences between the two organizations, and tried
16 to take care of them to the best of our ability.

17 Q. Did you keep records of these concerns and
18 complaints?

19 A. I personally did not.

20 Q. Now, when you say you personally did not, do
21 you mean that someone else might have?

22 A. I don't know if someone documented when they
23 talked to different customers.

24 I would be communicated to in usually our
25 meetings, in our weekly manager meetings, that, you

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 Bass Pro Trademarks, L.L.C.,

4 PETITIONER,

5 Vs.

Cancellation No.

6 92045000

7 Sportsman's Warehouse, Inc.,

8 RESPONDENT.

9 THE DEPOSITION OF PAUL OTTE
10 June 2, 2006
11
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ORIGINAL

1 Q. And how are you aware of that?

2 A. I have visited the store. I stopped
3 in a couple of times before our Sportsman's
4 Warehouse opened. I -- so I've seen the
5 Sportsman's Warehouse logo on the Bass Pro
6 Shops, and I also seen it with the Sportsman's
7 Center on it.

8 Q. When did you first visit the Bass Pro
9 Shops Sportsman's Warehouse?

10 A. It would have been a couple of weeks
11 before we opened our store, so approximately
12 beginning of May of last year.

13 Q. And what prompted you specifically to
14 visit the Bass Pro Shops Sportsman's Warehouse
15 at that time?

16 A. I -- myself, and some other employees
17 had never been to a Bass Pro Shop before, and
18 we were just checking out some of our
19 competition.

20 Q. And where are you currently employed
21 today?

22 A. I'm employed at Sportsman's Warehouse
23 at our Memphis, Tennessee location.

24 Q. How long has the Memphis location
25 been around?

1 A. We've been open since June 15th of
2 2005.

3 Q. Since your Sportman's Warehouse has
4 been open, last June, are you aware of any
5 instances where customers have been confused
6 as to the relationship of your store versus
7 the Bass Pro Shops Sportsman's Warehouse?

8 A. Yes. The first couple of months
9 while we were open we had some confusion.

10 Q. Did that surprise you?

11 A. It did at first because the building
12 of Bass Pro did have Sportman's Warehouse on
13 it. So some customers were wondering if we
14 were affiliated with them at all, and then as
15 soon as I told them that the Sportsman's
16 Warehouse was separate from Bass Pro, they
17 made a distinguish -- they distinguished
18 the difference. And then when Bass Pro
19 changed the Sportsman's Warehouse sign to
20 Sportsman's Center, the confusion was
21 completely gone.

22 Q. Let's go back to the first couple of
23 months, at the time when you indicated there
24 was confusion. Do you have any idea why there
25 was confusion?

1 Q. So you were promoted around April 15,
2 2005 at the St. Cloud location. How long did
3 you remain there after that time?

4 A. Another month before I moved down
5 here.

6 Q. What was your exact title when you
7 were first promoted to management?

8 A. Footwear manager.

9 Q. And why did you transfer to Memphis
10 in May of '05?

11 A. I was given the opportunity to be
12 promoted within the company, so I decided to
13 move. It was our first store we had opened
14 last year, and they needed a position in
15 footwear.

16 Q. Is footwear manager your current
17 position?

18 A. Yes, sir.

19 Q. Before coming to Memphis, had you
20 ever heard of Bass Pro Shops?

21 A. Yes.

22 Q. And how were you familiar with Bass
23 Pro Shops?

24 A. That they were a competitor, that
25 they sold approximately the same type of

1 Lake City to our stores in any given location
2 across the country.

3 Q. Do you understand Pacific Flyway
4 Wholesale to be a wholesaler?

5 A. Not to my knowledge.

6 Q. Do you know what a wholesaler is?

7 A. Yes. I would say I do.

8 Q. What's your understanding of what a
9 wholesaler is?

10 A. Wholesaler: Instead of selling to
11 retail, wholesaler would probably sell to
12 other companies at a different price; then you
13 would sell to a customer at a retail store.

14 Q. Is Sportsman's Warehouse to your
15 knowledge a retailer as opposed to a
16 wholesaler?

17 A. Yes.

18 Q. Have you ever known Sportsman's
19 Warehouse to be a wholesaler as opposed to a
20 retailer?

21 A. I do not.

22 Q. In your time working for Sportsman's
23 Warehouse both in St. Cloud and in Memphis, at
24 all times as far as you know, those locations
25 only provided retail services; is that

1 correct?

2 A. Yes.

3 Q. What kind of training did you receive
4 when you first became footwear manager?

5 A. I was taught how to replenish
6 inventory using our retail net services, our
7 computer systems, and how to count money in
8 the cash room in the morning, and how to count
9 cashiers down at night, along with other
10 relations concerning footwear and product
11 knowledge.

12 Q. Did your training -- and let's start
13 with the training that you received in the St.
14 Cloud location.

15 A. (Nods head affirmatively.)

16 Q. Did that in any way involve the
17 proper usage of Sportsman's Warehouse logos?

18 A. No.

19 Q. Did that in any way involve the
20 proper usage of Sportsman's Warehouse
21 trademarks?

22 A. No.

23 Q. In your responsibilities as a
24 footwear manager, do you have any
25 responsibilities relating in any way to

1 A. I believe it does, but I could be
2 mistaken.

3 Q. When we started the deposition, we
4 talked a little bit about confusion, and you
5 indicated that there were instances where
6 customers were confused as between the Bass
7 Pro Shops Sportsman's Warehouse and your store
8 going back to the first few months after you
9 opened; is that right?

10 A. Yes.

11 Q. How were you made aware of these
12 instances of confusion?

13 A. By customers coming in and telling
14 me.

15 Q. So you have firsthand knowledge of
16 the confusion?

17 A. With customers, yes.

18 Q. Do you have a rough estimate, let's
19 say in the first month that your store opened,
20 about how many customers indicated to you that
21 they were confused?

22 A. In the first month, to my knowledge,
23 approximately five.

24 Q. And what exactly did they say to you
25 to lead you to believe that they were

1 confused?

2 A. They came in and asked if we were
3 part of Bass Pro. And when we said no, they
4 asked why Bass Pro had Sportsman's Warehouse
5 on their building, then.

6 Q. And what was your response to that
7 question?

8 A. My response was we have a plaque on
9 the front of our store with our trademark of
10 the Sportsman's Warehouse. So I told them
11 that Sportsman's Warehouse for our company was
12 trademarked and that we had a plaque showing
13 it and that Bass Pro just used the name
14 Sportsman's Warehouse on their building.

15 Q. So you indicated that Sportsman's
16 Warehouse actually owned the trademark for
17 Sportsman's Warehouse?

18 A. I did because we were aware or told
19 of the plaque that we had that showed us
20 owning the trademark on Sportsman's Warehouse
21 as you see on the front of our building.

22 Q. Who told you that?

23 A. I believe it would have been our
24 store manager, Bob Goodwin, at the time. And
25 then the fact that we had the plaque that

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3
4 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
5 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

6 BASS PRO TRADEMARKS LLC,)
7)
8 Petitioner,)
9) Cancellation No.
10 v.) 92045000
11)
12 SPORTSMAN'S WAREHOUSE INC,)
13)
14 Respondent.)
15

16 DEPOSITION OF MS. TONI MILLER
17 Taken on behalf of the
18 Petitioner
19 January 23, 2007
20
21
22
23
24
25

P R O C E E D I N G S

(Proceedings began at 2:52
p.m. on Tuesday, January
23, 2007, with appearances
as noted.)

(The witness was placed
under oath by the court
reporter.)

* * * * *

MS. TONI MILLER,
of lawful age, having been called as a witness and
being first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Could you please state your full name
for the record?

A. Marie Antoinette Miller.

Q. Okay. And where do you currently work?

A. I work at Bass Pro Shops.

Q. What is your position with Bass Pro
Shops?

A. I'm the vice president and chief
financial officer.

1 Warehouse Incorporated?

2 A. Yes, I am.

3 Q. Okay. And what's your general
4 understanding of the dispute?

5 A. The dispute has to do with the trademark
6 issue and that trademark being owned by Bass Pro
7 Shops -- well, Bass Pro Trademarks being Sportsman's
8 Warehouse.

9 And there's confusion with customers out
10 there about, you know, we have a competitor that's
11 using the name that's the name we registered to use
12 and there's a lawsuit over that.

13 Q. Okay. Does Bass Pro currently have any
14 stores that operate under the Bass Pro Shops
15 Sportsman's Warehouse name?

16 A. Yes.

17 Q. Okay. How many such stores does Bass
18 Pro operate --

19 A. Three.

20 Q. -- currently?

21 A. Three.

22 Q. Okay. And where are those three stores
23 located?

24 A. The stores are Memphis, St. Charles,
25 and -- I can't remember. Is it Columbia?

1 Q. Are you familiar with a third one that
2 was opened in Macon, Georgia?

3 A. Oh, Macon. I'm sorry. Yeah. That was
4 just opened last year.

5 Q. Okay. That one was opened in late 2006?

6 A. Mm-hmm. Yes.

7 Q. Okay. Other than those three stores
8 that are currently in operation under the name Bass
9 Pro Shops Sportsman's Warehouse, are you aware of any
10 other stores that operate under that name?

11 A. No, I'm not.

12 Q. In the past?

13 A. Oh, in the past. Oh. Yes. I thought
14 we were just talking about the present. It was
15 Sportsman's Warehouse at the Duluth, Georgia --
16 Atlanta, Georgia.

17 Q. Okay. Was that the first Bass Pro Shops
18 Sportsman's Warehouse in operation?

19 A. Yes.

20 Q. Okay. Do you know roughly when the
21 Atlanta Sportsman's Warehouse store opened?

22 A. About March 1st, 1995.

23 Q. Okay. We've got a binder here with some
24 exhibits. I want to direct your attention to Exhibit
25 Number 10. It's a multiple-page exhibit. (Mr.

1 Campbell hands a document to the witness).

2 A. Okay.

3 (Petitioner's Exhibit 10,
4 1995 Bass Pro Catalog, BPS
5 003336 - 003340, was
6 introduced by Mr.
7 Campbell.)

8 MR. CAMPBELL:

9 Q. Can you flip through those --

10 A. Mm-hmm.

11 Q. -- pages and let me know after you've
12 had a chance to look at those if you recognize what
13 that exhibit appears to be.

14 A. (The witness reviews the document). It
15 appears to be pages from our 1995 master catalog.

16 Q. Okay. And if you turn to the page
17 that's got the number BPS 003340 at the bottom.

18 A. (The witness turns to the requested
19 page). Okay.

20 Q. Can you describe what that page
21 represents?

22 A. It's an advertisement that was put in
23 our 1995 master catalog for the new store that was
24 opening in Atlanta, Georgia, the Sportsman's
25 Warehouse.

1 Q. Okay. And does that page there
2 represent or reflect the opening date for that Atlanta
3 store?

4 A. It says opens March 1st, 1995, which I
5 believe that to be the date.

6 Q. Okay. You believe that to be the date
7 that that --

8 A. Mm-hmm.

9 Q. -- Atlanta store opened?

10 A. Yes.

11 Q. Is it Bass Pro's practice to circulate
12 announcements for a new retail store in advance of the
13 store's actual opening?

14 A. Yes.

15 Q. Okay. Would that have been the case
16 with the Atlanta store?

17 A. Yes.

18 Q. And why does Bass Pro circulate
19 announcements in advance of a store opening?

20 A. We circulate the announcements because
21 we want our customers to know that we've come into
22 that market, that the store is now open for business,
23 and we need to advertise. Just basic retailing.

24 Q. Okay. Did Bass Pro have any other
25 retail stores around the Atlanta region prior to the

COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BASS PRO TRADEMARKS LLC,)	
)	
Petitioner,)	
)	Cancellation No.
v.)	92045000
)	
SPORTSMAN'S WAREHOUSE INC,)	
)	
Respondent.)	

DEPOSITION OF MR. STAN LIPPELMAN
Taken on behalf of the
Petitioner
January 23, 2007

P R O C E E D I N G S

(Proceedings began at 1:00
p.m. on Tuesday, January
23, 2007, with appearances
as noted.)

(The witness was placed
under oath by the court
reporter.)

* * * * *

MR. STAN LIPPELMAN,
of lawful age, having been called as a witness and
being first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, can you please state your full name
for the record?

A. Uh-huh. Stan Lippelman.

Q. Okay. Where do you currently work?

A. Bass Pro Shops in Springfield, Missouri.

Q. And what is your position with Bass Pro
Shops?

A. I'm the vice president of marketing.

1 Q. Okay. Do you have primary
2 responsibility for the creation and publication of all
3 Bass Pro advertising?

4 A. Yes.

5 Q. Okay. Is all Bass Pro advertising
6 subject to your approval?

7 A. Yes. Mine or my group's.

8 Q. Okay. Is it fair to say, are you
9 generally familiar with all the advertising that Bass
10 Pro publishes in the various markets in which it has
11 retail stores?

12 A. Generally speaking, yes.

13 Q. Okay. And does Bass Pro have a retail
14 store in Memphis, Tennessee?

15 A. Yes.

16 Q. What is the name of that retail store?

17 A. It's Bass Pro Shops Sportsman's
18 Warehouse.

19 Q. Okay. Do you know how many retail
20 stores Bass Pro currently operates nationwide?

21 A. 38 in total.

22 Q. Okay. And are all of the retail stores
23 owned by Bass Pro operated under the same name?

24 A. No.

25 Q. Okay. What are the different names that

1 A. Yes, almost always.

2 Q. When would they not be produced
3 in-house?

4 A. If we just have a special project that
5 we need some outside help to get done or if it's a new
6 program, say, that we may be testing, we might have an
7 outside agency do the initial design work. And then
8 when we launch it, we would bring it in-house.

9 Q. In those instances, would that type of
10 promotional material also be subject to your approval?

11 A. Mm-hmm. Yes, absolutely.

12 Q. Okay. Are you personally familiar with
13 the promotional materials used to promote the Memphis
14 Bass Pro Sportsman's store?

15 A. Yes, I am.

16 Q. Okay. If you look in this binder here,
17 there's an exhibit marked as Petitioner's Exhibit
18 Number 7. (Mr. Campbell hands a document to the
19 witness).

20 (Petitioner's Exhibit 7,
21 Sales Ad, 11/4 - 11/21,
22 BPS 001620 - 001631, was
23 introduced by Mr.
24 Campbell.)

25 A. Uh-huh. (The witness turns to the

1 requested page.)

2 MR. CAMPBELL:

3 Q. And it has several pages. Can you kind
4 of flip through that? When you're done, let me know
5 if you are familiar with this exhibit.

6 A. (The witness reviews the document.)
7 Yes, I am.

8 Q. Okay. And can you just describe what
9 this Exhibit Number 7 is?

10 A. This is a circular. This would have
11 been our November tab from 2005 for the Memphis
12 location that would have been mailed to customers.

13 Q. Okay.

14 A. And it's advertising sale items that we
15 have at that particular time.

16 Q. Okay. And how can you tell that this is
17 from your Memphis Sportsman's location?

18 A. Based on the indicia area on the back
19 where it mentions Sportsman's and has the address for
20 the Macon store -- or for the Memphis store.

21 Q. Okay. And what you're referring to is
22 on the last page, the page marked BPS 002065?

23 A. Yes.

24 Q. Okay. And then also do you see anything
25 on the front page that would be indicative of the

1 location that this ad would apply to?

2 A. Yes, it does have the Bass Pro Shops
3 Sportsman's Warehouse on the cover. The sale date is
4 of November 4th through the 21st.

5 And in terms of the timing, I know this is
6 2005 because that was the last year that the -- that
7 Martin Truex ran the Busch series, and that's the
8 Busch series car on the top of the page.

9 Q. Okay. And you're referring to that
10 picture --

11 A. The picture of the car in the upper
12 right-hand corner.

13 Q. Okay. That's BPS 001620?

14 A. Mm-hmm.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Okay. And you had pointed on the back
18 page to something that indicated that this was an ad
19 for the Sportsman's Warehouse in Memphis.

20 Do all of the circulars that are published in
21 a particular market include a similar reference like
22 this?

23 A. Yes.

24 Q. Okay. And how frequently does Bass Pro
25 circulate these type of circulars?

1 A. It will vary by store, but in general --
2 and time of the year, but in general we would send out
3 a circular like this about once every two to three
4 weeks.

5 Q. Okay. Would that be the case every two
6 to three weeks in the Memphis Sportsman's Warehouse?

7 A. In general, yes. There might be certain
8 times of the year like in January where it might go
9 four weeks between contacts, but typically it's two to
10 three.

11 Q. Okay. And if you go ahead and turn to
12 the next exhibit in the binder.

13 A. (The witness turns to the requested
14 page.)

15 MR. ALLGEYER: Is that 10?

16 MR. CAMPBELL: There should be --

17 A. 8.

18 MR. CAMPBELL: -- an 8 in there.

19 MR. ALLGEYER: Oh. The exhibit sort of
20 overwhelms the tab.

21 MR. CAMPBELL: I just did the same thing.

22 Q. Are you there?

23 A. Mm-hmm.

24 Q. Can you identify the document that's
25 marked as Petitioner's Exhibit Number 8?

1 (Petitioner's Exhibit 8,
2 Sales Ad 8/6/05 - 8/14/05,
3 BPS 002014 - 002065, was
4 introduced by Mr.
5 Campbell.)

6 A. Yes, I can. This is the 2005 Fall
7 Hunting Classic tab or circular for the Memphis store,
8 the Memphis Sportsman's Warehouse.

9 MR. CAMPBELL:

10 Q. Okay. And again, how can you tell that
11 this one is for the Memphis Sportsman's Warehouse
12 store?

13 A. Based on the indicia area on the back of
14 the flier.

15 Q. Okay.

16 A. On the page BPS 002065.

17 Q. Okay. And what was the date of
18 circulation for this particular ad?

19 A. The ad went in home between July 30th
20 and August 2nd of 2005, and then the sale ran from
21 August 6th through August 14th of 2005.

22 Q. Okay. So based on that, you would --
23 this ad would have actually been circulated to the
24 public beginning when?

25 A. July 30th of 2005.

1 Q. Okay. Then I've got one more, Exhibit
2 9.

3 A. (The witness turns to the requested
4 page).

5 Q. Can you identify Exhibit Number 9?

6 A. This is an ROP ad or a newspaper ad that
7 would have ran probably in the sports section of the
8 local Memphis newspaper for the Memphis Sportsman's
9 Warehouse.

10 And it says on the right-hand side -- and
11 that's a note from one of my staff that it was the
12 Memphis Commercial Appeal. It ran on November 4th.

13 Q. Okay. Do you know what year that ran?

14 A. I would assume that this is 2005, but I
15 can't tell that from this document.

16 Q. Okay. There's a -- you can see at the
17 very bottom in the right-hand corner there's a date
18 stamp there.

19 A. 2004.

20 Q. Would that date stamp be indicative of
21 when the ad actually would have been circulated?

22 A. It would have probably been close to
23 that. It could also be indicative of when this
24 particular printout was done.

25 The note here does say November 4th, so --

1 and that says 2004, so this probably is a 2004 ad.

2 Q. Okay. And if you flip through all four
3 pages, are these the same ad or are they different
4 ads?

5 A. These would be different newspaper ads
6 for the Memphis Sportsman's Warehouse store.

7 Q. Okay. And each one at the top
8 identifies the store, is that correct?

9 A. Yes.

10 Q. And what does it identify the store as?

11 A. Bass Pro Shops Sportsman's Warehouse.

12 Q. Okay.

13 A. And then it has the store address at the
14 bottom.

15 Q. Okay. To your knowledge have all of the
16 Memphis Bass Pro Sportsman's Warehouse circulars
17 referenced this store as Bass Pro Sportsman's
18 Warehouse?

19 A. Yes.

20 Q. Okay. Are there any exceptions that
21 you're aware of?

22 A. There was a -- there was a brief period
23 where in the Memphis store the ads were changed
24 without approval for a period of about two months, if
25 I -- if my memory serves me correctly, and then was

1 subsequently changed back.

2 Q. Okay. When you say they were changed,
3 how were they changed?

4 A. It was referred to at that time as
5 Sportsman's Center instead of Sportsman's Warehouse.

6 Q. Okay. And you said that that had gone
7 on for roughly two months?

8 A. I believe. I don't remember the exact
9 period, because I'm frankly not aware of when it
10 started and when it ended. But my recollection was it
11 was for a few months.

12 Q. Okay. And then at some point you said
13 there was a change back?

14 A. Yes.

15 Q. What did you mean by that?

16 A. Well, when I realized that it had been
17 changed, I had it changed back to the correct name,
18 which was Sportsman's Warehouse.

19 Q. Okay. And you testified earlier about
20 the characteristics of the Sportsman's Center. Do you
21 remember that testimony?

22 A. Yes.

23 Q. Okay. And in your estimation is the
24 Bass Pro Shops retail store in Memphis, Tennessee, a
25 Sportsman's Center?

1 A. No, not at all.

2 Q. Okay. Does Bass Pro have a Bass Pro
3 Sportsman's Center in Memphis?

4 A. No, it does not.

5 Q. Do you know if the current circulars for
6 the Memphis market refer to the Bass Pro retail store
7 as a Sportsman's Center or Sportsman's Warehouse?

8 A. Sportsman's Warehouse.

9 Q. Okay. Do you know if the Memphis store
10 has any plans in the future to publish any marketing
11 materials identifying the Memphis store as a
12 Sportsman's Center?

13 A. No, there's no plans to do that.

14 Q. If there were plans to change the
15 marketing materials to identify the store as a
16 Sportsman's Center, would that be something that would
17 have to be approved by you?

18 A. The materials would have to be approved
19 by me, and then the actual change of the name would
20 have to be approved by I assume Jim Hagale and
21 probably John Morris.

22 Q. Okay. Are you aware of any discussions
23 among any of those gentlemen regarding a change of the
24 Memphis location to a Sportsman's Center?

25 A. No. They're so different I can't see us

COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BASS PRO TRADEMARKS LLC,)	
)	
Petitioner,)	
)	Cancellation No.
v.)	92045000
)	
SPORTSMAN'S WAREHOUSE INC,)	
)	
Respondent.)	

DEPOSITION OF MR. HADEN HOLLEY

Taken on behalf of the

Petitioner

January 23, 2007

P R O C E E D I N G S

(Proceedings began at
10:00 a.m. on Tuesday,
January 23, 2007, with
appearances as noted.)
(The witness was placed
under oath by the court
reporter.)

* * * * *

MR. HADEN HOLLEY,
of lawful age, having been called as a witness and
being first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, can you please state your full name
for the record?

A. It's Myers Haden Holley Junior.

Q. Where do you currently work?

A. Bass Pro Shops Sportsman's Warehouse,
Memphis, Tennessee.

Q. What is your current title?

A. General manager.

1 types of issues customers have brought to your
2 attention?

3 A. Poor customer service. Out of stocks.
4 Why don't you carry a certain item. Pricing
5 questions.

6 Q. What types of pricing questions do
7 customers ask you?

8 A. You know, why -- why we would be higher
9 than our other store or why we would -- you know, why
10 our prices are different than others of our
11 competitors, Wal-Mart, Target, et cetera. You know,
12 those kind of questions.

13 Q. And when you said customers ask why your
14 prices are higher than other stores, what do you mean
15 by other stores?

16 A. Sometimes we get questions about
17 Sportsman's Warehouse, South Haven, Mississippi,
18 store, or the Winchester locations.

19 Sometimes they compare us the same. They
20 don't understand why our prices -- they think
21 sometimes we're the same store sometimes.

22 Q. Okay. Are you familiar with the
23 respondent in this matter, Sportsman's Warehouse
24 Incorporated?

25 A. Yes.

1 Q. Okay. When you just made a reference to
2 South Haven, Mississippi, store and a Winchester
3 store, is it your understanding that those stores are
4 operated by Sportsman's Warehouse Incorporated?

5 A. Yes.

6 Q. When did you first become aware of
7 Sportsman's Warehouse Incorporated?

8 A. I guess prior to working for Bass Pro, I
9 guess, when I was kind of looking at some different
10 job avenues or different career paths or what have
11 you.

12 And then I decided to accept the job. And
13 like I say, I learned of them I guess quite quickly, I
14 guess, you know, when I started or what have you. At
15 Bass Pro Shops.

16 Q. Okay. Have you ever visited the South
17 Haven -- or let's start with the South Haven store.
18 Have you ever visited the South Haven Sportsman's
19 Warehouse Incorporated store?

20 A. Yes.

21 Q. On one occasion or how many occasions?

22 A. Probably several occasions.

23 Q. And have you also visited the
24 Sportsman's Warehouse Incorporated store that you
25 referred to as the Winchester store?

1 A. Yes.

2 Q. Have you visited that one on several
3 occasions?

4 A. Yes.

5 Q. During your visits to the Sportsman's
6 Warehouse Incorporated stores, did you review the
7 product offerings at those particular stores?

8 A. Right. We competitive shop quite often,
9 you know, look at our competitors and different
10 merchandise and things like that, of course.

11 Q. Okay. Are you familiar with the types
12 of merchandise that are offered for sale at the
13 Winchester Sportsman's Warehouse Incorporated store?

14 A. Yes, yes.

15 Q. And are you also familiar with the
16 brands of merchandise that are offered for sale at the
17 Winchester Sportsman's Warehouse Incorporated store?

18 A. Yes.

19 Q. Are you familiar with the types of
20 merchandise offered for sale at the South Haven,
21 Mississippi, Sportsman's Warehouse Incorporated store?

22 A. Yes.

23 Q. And are you aware of the brands of
24 merchandise that are offered for sale at the South
25 Haven Sportsman's Warehouse Incorporated store?

1 A. Yes.

2 Q. And then of course as general manager of
3 the Bass Pro Sportsman's Warehouse store in Memphis,
4 are you familiar with your own store's product
5 offerings?

6 A. Yes.

7 Q. Okay. Does your store sell similar
8 types of merchandise that would be sold by Sportsman's
9 Warehouse Inc in their South Haven store?

10 A. Yes.

11 Q. And would your answer be the same for
12 the Sportsman's Warehouse Incorporated store that you
13 referred to as the Winchester store?

14 A. Yes.

15 Q. Where is the Sportsman's Warehouse
16 Incorporated Winchester store relative to your store?

17 A. It's about eight or nine miles,
18 something like that, away.

19 Q. Okay.

20 A. Eight or nine miles south, I would say
21 south of our store.

22 Q. Okay. And the Winchester store, is that
23 actually located in Memphis?

24 A. Yes, yes.

25 Q. And relative to your Memphis store,

1 where is the South Haven, Mississippi, store located?

2 A. It's about 18 to 20 miles southwest of
3 the store, something like that.

4 Q. Okay. During your visits to the
5 Sportsman's Warehouse Incorporated stores, did you
6 notice whether or not there were certain brands of
7 merchandise that are carried by both your store and
8 Sportsman's Warehouse Incorporated?

9 A. Yes.

10 Q. And what did you notice?

11 A. Some of the same firearms. A lot of
12 similarities in footwear. Camping. Fishing. I mean
13 a lot of similarities. Same brands, types.

14 Q. Okay. Does your store serve the same
15 types of customers that are served by the Sportsman's
16 Warehouse Incorporated stores in the Memphis area?

17 A. I would say yes, of course.

18 Q. Okay. Do you track the average amount
19 of money spent by customers at your store?

20 A. Yes. We -- that's pretty much tracked
21 on a daily and yearly basis, yes.

22 Q. Okay. And what is the typical average
23 amount of money spent by customers when they visit
24 your store?

25 A. For the past year roughly probably \$55 a

1 person, something like that, per transaction.

2 Q. Okay. What about in 2005?

3 A. It probably -- probably a little bit
4 less than that.

5 Q. Okay. Are you responsible for the
6 marketing efforts for the Memphis Bass Pro Sportsman's
7 Warehouse?

8 A. The -- I guess the execution of the
9 marketing, you know, the execution of the plan.

10 Q. Okay. Who creates the actual
11 advertising for the Memphis Bass Pro Sportsman's
12 Warehouse store?

13 A. Corporate marketing.

14 Q. Okay. And when you said that you're
15 responsible for execution, what did you mean by that?

16 A. Setting the circulars, making sure that
17 we schedule, you know, any of the events or what have
18 you, make sure we've got the -- all the plans in place
19 for all the company-wide events and what have you.

20 Q. And is that something that you're
21 responsible for as the general manager?

22 A. Right, as far as making sure all the
23 events are executed on time, you know, timely and
24 within the company guidelines, of course.

25 Q. Okay. In the course of the performance

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 2,390,988
For the Mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING
RELOADING OUTERWARE FOOTWEAR and DESIGN

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C.,

Petitioner,

Cancellation No. 92045000

v.

Sportsman's Warehouse, Inc,

Registrant.

Expert Report of Michael B. Mazis, Ph.D.

September 2006

Cancellation No. 92045000
Bass Pro Trademarks, L.L.C.
v.
Sportsman Warehouse, Inc.
BASS PRO
TRIAL BRIEF EX. 20

MBM000111

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SUMMARY OF FINDINGS

A survey was conducted in 15 cities among 396 people 18 years of age and older who have purchased fishing, hunting, camping or other outdoor gear in the past 12 months. Respondents were first shown the petitioner's "Bass Pro Shops Sportsman's Warehouse" logo. Then, respondents were exposed to an array of six logos that they would be likely to encounter in shopping for outdoor gear. All respondents were exposed to the same five logos – Academy, Cabela's, Dick's Sporting Goods, L.L. Bean, and Scheel's. In addition, respondents saw a sixth logo; half of the respondents saw the logo for Sportsman's Warehouse, Inc. (the registrant), and the other half of the respondents saw the Gander Mountain logo (the "control" logo). Thus, respondents were assigned randomly to one of two cells – a "test" cell (that included five logos plus the Sportsman's Warehouse, Inc. logo) and a "control" cell (that included five logos plus the Gander Mountain logo). The purpose of the "control" cell was to reduce or eliminate factors such as guessing or question wording as an explanation for the findings ("noise").

To assess potential confusion between the petitioner's and the registrant's marks, all survey respondents were asked whether any of the six logos in front of them either (1) is put out, (2) needed permission or approval, or (3) is affiliated with the company that puts the logo that they had seen earlier ("Bass Pro Shops Sportsman's Warehouse" logo). The results show that 109 respondents (54%) in the "test" cell mentioned the "Sportsman's Warehouse, Inc." logo and 47 respondents (24%) in the "control" cell mentioned the "Gander Mountain" logo. The difference between the "Sportsman's Warehouse, Inc" responses in the "test" cell and the "Gander Mountain" responses in the "control" cell is the appropriate measure of confusion between the two marks. The results of the survey indicate that there was a substantial likelihood of confusion (30%)

(54% - 24% = 30%) between the petitioner's and the registrant's marks. In addition, 22% of the respondents who indicated that the Sportsman's Warehouse, Inc. logo either (1) is put out, (2) needed permission or approval, or (3) is affiliated with the company that puts the "Bass Pro Shops Sportsman's Warehouse" logo mentioned that similarity of the names was the reason that they believed the logos had a common source or were somehow connected.

AUTHORSHIP AND RESPONSIBILITY

Dr. Michael B. Mazis

I designed the consumer survey, and I oversaw all aspects of the data collection and data analysis. (See Appendix A for a detailed description of my professional qualifications.) I have conducted marketing research surveys for over 30 years. I am Professor of Marketing at American University's Kogod School of Business, where I have been a faculty member for over 25 years, including over 10 years as chair of the marketing department. I have taught courses in consumer behavior, marketing research, marketing principles, marketing management, Internet marketing, and marketing and public policy.

I received my B.S. degree in Economics from the University of Pennsylvania, my M.B.A. degree from New York University, and my Ph.D. in Business Administration degree, with a concentration in marketing, from Pennsylvania State University. In addition, I was editor of the *Journal of Public Policy & Marketing* from 1992 to 1995, and I was Associate Editor of *The Journal of Consumer Affairs* from 1998 to 2001. I am a member of the American Marketing Association and a member and former director of the Association for Consumer Research.

My research focuses on consumer perception of advertising, product labels, and other marketing materials and on the impact of information on consumer perceptions. I have published over 60 articles in academic publications, including *Journal of Marketing*, *Journal of Consumer Research*, *Journal of Marketing Research*, *Journal of Public Policy & Marketing*, *The Journal of Consumer Affairs*, *Journal of Personality and Social Psychology*, *Journal of Experimental Social Psychology*, and *Journal of the American Medical Association*.

From 1976-79, I served as an in-house marketing expert at the Food and Drug Administration (FDA) and at the Federal Trade Commission (FTC), where I evaluated consumer perception of advertising and product labels, designed and conducted marketing research surveys, and evaluated surveys submitted by companies seeking to substantiate promotional claims. I continue to serve as a consultant for the FTC, having served as the FTC's principal marketing witness in *FTC vs. Novartis* in 1997, *FTC vs. Trans Union* in 1998, *FTC vs. Mercury Marketing* in 2003, and *FTC vs. Telebrands* in 2004. In addition, I have served as a consultant on marketing issues and on marketing research surveys for the FDA, Bureau of Alcohol, Tobacco, and Firearms, Consumer Product Safety Commission, Department of Justice, U. S. Mint, and the State of California. I have also spoken on designing consumer surveys at conferences sponsored by the American Bar Association, Better Business Bureaus, and American Marketing Association.

Target Research Group, Inc.

As a marketing research expert, I routinely rely on independent marketing research firms, such as Target Research Group, Inc. and Field Solutions, to administer,

collect, code, tabulate, and validate survey research. Data collection, coding, and tabulations were administered by Target Research Group, Inc., under the supervision of Larry Herman, Vice President. Mr. Herman has over 30 years experience in the marketing research field. Target Research Group, Inc., founded in 1986, is a full-service marketing research company with headquarters in Nanuet, NY. Since 1999, Target Research Group has been part of the MVL Group.

Field Solutions

Field Solutions, an independent research company, conducted the survey validation as described later in my report.

RESEACH OBJECTIVE

The principal objective of the survey that I conducted was to determine whether purchasers of outdoor gear perceive that the company that puts out the logo used by Sportsman's Warehouse, Inc., is put out, has permission or approval from, or is affiliated or is connected with the company that puts out the "Bass Pro Shops Sportsman's Warehouse" logo. Moreover, by using a control group, the survey was designed to assess how much of this possible confusion was due to "noise," such as guessing or question wording.

PROCEDURE

Universe and Sample

The universe for the study consisted of individuals 18 years of age and older who had in the last 12 months purchased fishing, hunting, camping, or other outdoor gear. Target Research Group was responsible for administering the data collection, which was conducted between August 18 and August 29, 2006 in 15 shopping malls. Thirteen of

the shopping malls were in states where there are both Bass Pro Stores and Sportsman's Warehouse, Inc, stores: Colorado, Iowa, Mississippi, Oklahoma, Pennsylvania, Tennessee, and Texas. In addition, one shopping mall was in St. Louis, Missouri, where there exists a store that uses the "Bass Pro Shops Sportsman's Warehouse" name, and one shopping mall was in Atlanta, Georgia, where there previously existed a store that used the "Bass Pro Shops Sportsman's Warehouse" name. The study was "double blind." Neither the interviewers nor the respondents were aware of the identity of the client or the purpose of the study.

Research Design

The research design that I used is commonly used to assess confusion between trademarks.¹ Respondents were first shown the "Bass Pro Shops Sportsman's Warehouse" logo. Then, they were asked a series of "distractor" questions about the television programs they view. The sole purpose of these questions was to provide time between exposure to the "Bass Pro Shops Sportsman's Warehouse" logo and exposure to the array of six logos shown subsequently to respondents. Next, respondents were asked to look at six logos that they might encounter in advertising materials, in retail stores, or on the Internet. Respondents were asked to "look at these store logos the way you would if you were considering buying some products from these stores." Three different arrangements or rotations were developed to avoid any bias due to position in the array. Approximately one-third of respondents were shown the products in each of the arrangements. The logos that appeared in the array were:

Sportsman's Warehouse, Inc. or Gander Mountain
Academy
Cabella's

¹ J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, 4th Edition, Thomson Publishing at § 32:177

Dick's Sporting Goods
L.L. Bean
Scheel's

Survey respondents were assigned randomly to one of two cells – a test cell or a control cell. Five of the logos were shown to all respondents. In addition, respondents in the test cell were also shown the Sportsman's Warehouse, Inc.'s logo (fifth logo).

Respondents in the control cell were shown instead the Gander Mountain logo.

The purpose of using a control cell was to determine whether the presence of the "Sportsman's Warehouse" name was the reason for consumers' responses or whether "noise" was the likely cause of the results. In this case, "noise" refers to factors, such as guessing or question wording, which may interfere with the researcher's accurate assessment. "Noise" is reduced or eliminated by subtracting the "Gander Mountain" responses (control cell) from the "Sportsman's Warehouse, Inc." responses (test cell). Thus, the purpose of the control cell was to reduce or eliminate "noise" as an explanation for the findings. The advisability of using a control cell or group is mentioned in the "Reference Guide on Survey Research":

It is possible to adjust many survey designs so that causal inferences about the effect of a trademark or an allegedly deceptive commercial become clear and unambiguous. By adding an appropriate control group, the survey expert can test directly the influence of the stimulus. In the simplest version of a survey experiment, respondents are assigned randomly to one of two conditions. For example, respondents assigned to the experimental condition view an allegedly deceptive commercial, and respondents assigned to the control condition either view a commercial that does not contain the allegedly deceptive material or do not view any commercial.²

"Screening" Questionnaire

Interviewers used a "screening" questionnaire, which consisted of questions to

² Shari Seidman Diamond, "Reference Guide on Survey Research" in *Reference Manual on Scientific Evidence, Second Edition*, Federal Judicial Center, 2000 at 257.

determine whether potential respondents were qualified to participate in the study. (See Appendix B.) A potential survey participant had to be 18 years of age or older and had to have purchased in the last 12 months fishing, hunting, camping, or other outdoor gear. Potential respondents were excluded from participation if they or members of their households worked for an advertising agency or public relations firm, for a marketing research firm, or for a store or company that sells outdoor gear. In addition, potential respondents were excluded if they had participated in a marketing research survey other than a political poll during the past three months. They were also excluded if they wore eyeglasses or contact lenses for reading but did not have their corrective eye wear with them at the time of the interview. Those potential respondents who were qualified to participate in the study based on their responses to the "screening" questionnaire were invited to participate in the study and were administered the "main" questionnaire.

"Main" Questionnaire

At the start of the "main" questionnaire (See Appendix C), the interviewer presented the respondent with a card containing the "Bass Pro Shops Sportsman's Warehouse" logo and said:

On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

Then, the respondent handed the card with the "Bass Pro Shops Sportsman's Warehouse" logo back to the interviewer who removed it from sight. Next, four "distractor" questions were asked:

About how often do you watch television?
Which of the following TV shows do you sometimes watch? (list read)
And which one type of TV show do you watch most often?
Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

Then, the interviewer took the respondent to the display area and uncovered an array of six logos (See Appendix D) and said:

On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

Respondents were then asked:

If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company as the store logo that I showed you earlier?

If respondents answered that they did think that one or more of the six logos in the array was put out by the same company that put out the "Bass Pro Shops Sportsman's Warehouse" logo that they had seen earlier, they were asked:

Which logo or logos in front of you do you think is put out by the same company that puts out the logo that I showed you earlier?

For each logo mentioned, respondents were asked why they selected that particular logo.

Interviewers then instructed respondents: "For the next question, please consider only the remaining logos, not the one(s) you just named." (Interviewers were instructed to remove from the array the logo or logos previously mentioned by the respondent.)

Next, respondents were asked whether one or more of the companies that made the remaining logos in the array received or needed to receive permission or approval from

the company that put out the logo shown earlier (“Bass Pro Shops Sportsman’s Warehouse”).

Then, they were asked to indicate the specific logo or logos that they felt were put out by companies that received or needed to receive permission or approval from the company that put out the “Bass Pro Shops Sportsman’s Warehouse” logo. In addition, they were asked to give their reasons for selecting the logos chosen. Finally, previously mentioned logos were removed from the array, and respondents were asked whether one or more of the companies that put out the remaining logos in the array is affiliated with, is connected to, or is part of the company that put out the logo shown earlier (“Bass Pro Shops Sportsman’s Warehouse”). Then, they were asked to indicate the specific logos that are put out by companies that are affiliated with, connected to, or part of the company that put out the logo shown earlier (“Bass Pro Shops Sportsman’s Warehouse”). Finally, they were asked to give their reasons for selecting the logos chosen.

Field Procedures, Coding, and Validation

Target Research Group, under my supervision, prepared separate instructions for interviewers and their supervisors. (See Appendix E.) Before starting work on the study, each interviewer was required to read the interviewer instructions, to attend a personal briefing at which interviewing procedures were discussed in detail, and to complete a practice interview. Target Research Group was responsible for editing and coding the questionnaires. After arriving at Target Research Group, questionnaires were checked for accuracy and completeness. The responses to all questions were then entered into a data file using 100% keypunch verification – that is, all data were keypunched twice to avoid any errors.

Validation was conducted by attempting to re-contact respondents to verify that they participated in the study. The names and telephone numbers of all respondents who had provided this information were sent to Field Solutions, an interviewing service not affiliated with the Target Research Group, to conduct telephone validation. They attempted to validate 100% of the interviews, using a validation questionnaire that I developed. (See Appendix F.) In conducting the validation telephone calls, a minimum of three attempts were made to re-contact all respondents who had provided telephone numbers. A total of 408 interviews were completed, and 313 respondents (77%) were contacted. All of the respondents contacted confirmed that they participated in the study and met key screening criteria. Twelve respondents were removed subsequently from the database during editing because they failed to show respondents the correct logos or didn't conduct the interviews properly. Thus, 396 respondents (202 in the test cell and 194 in the control cell) were included in the final database.

RESULTS

In analyzing the results of the survey, I compared the findings of the test cell, which was exposed to the logo of Sportsman's Warehouse, Inc., plus five other logos, and of the control cell, which was exposed to Gander Mountain logo and the same five logos. (See Appendix G for tabulations.) First, the analysis focused on whether, in the test cell, respondents indicated that the Sportsman's Warehouse, Inc. logo was put out by the same company that put out the "Bass Pro Shops Sportsman's Warehouse" logo, and, whether, in the control cell, respondents indicated that Gander Mountain logo was put out by the same company that put out the "Bass Pro Shops Sportsman's Warehouse" logo.

Of the 202 respondents in the test cell, 91 (45%) indicated that the Sportsman's Warehouse, Inc., logo was put out by the same company that put out the logo that they

had seen earlier ("Bass Pro Shops Sportsman's Warehouse"). In contrast, 19 (10%) of the 194 respondents in the control cell, mentioned that Gander Mountain logo was put out by the same company that put out the "Bass Pro Shops Sportsman's Warehouse" logo. Therefore, adjusting for the control cell, 35% (45% - 10%) of outdoor gear purchasers were likely confused about source because of the similarity of the "Bass Pro Shops Sportsman's Warehouse" logo and the logo put out by Sportsman's Warehouse, Inc. That is, 35% of outdoor gear purchasers who were exposed to the "Bass Pro Shops Sportsman's Warehouse" logo felt that, the company that puts out the Sportsman's Warehouse, Inc.'s logo also puts out the "Bass Pro Shops Sportsman's Warehouse" logo.

A subsequent analysis focused on permission/approval and affiliation. This analysis revealed that a total of 110 (54%) respondents in the test cell indicated that the company that puts out the Sportsman's Warehouse, Inc. logo either (1) puts out, (2) needed permission or approval, or (3) is affiliated with that the company that puts out the "Bass Pro Shops Sportsman's Warehouse" logo. In addition, only 47 (24%) of respondents in the control cell mentioned that the company that puts out the Gander Mountain logo either (1) puts out, (2) needed permission or approval, or (3) is affiliated with that the company that puts out the "Bass Pro Shops Sportsman's Warehouse" logo. Therefore, adjusting for the control cell, 30% (54% - 24%) of purchasers of outdoor gear were likely confused about the source or the relationship between the company that puts out the Sportsman's Warehouse, Inc.'s logo and the company that puts out the "Bass Pro Shops Sportsman's Warehouse" logo.

In addition, 22% of the respondents who indicated that the Sportsman's Warehouse, Inc. logo either (1) is put out, (2) needed permission or approval, or (3) is affiliated with the company that puts the "Bass Pro Shops Sportsman's Warehouse" logo

mentioned that similarity of the names was the reason that they believed the logos had a common source or were somehow connected.

CONCLUSIONS

I conducted a survey in 15 cities among 396 people 18 years of age and older who have purchased fishing, hunting, camping or other outdoor gear in the past 12 months. Respondents were first shown the "Bass Pro Shops Sportsman's Warehouse" logo. Then, respondents were exposed to an array of six logos that they would be likely to encounter in shopping for outdoor gear. Among these six logos was the logo put out by Sportsman's Warehouse, Inc. To assess potential confusion between the petitioner's and the registrant's marks, all survey respondents were asked whether any of the six logos in front of them either (1) is put out, (2) needed permission or approval, or (3) is affiliated with the company that puts out the logo that they had seen earlier ("Bass Pro Shops Sportsman's Warehouse" logo). Adjusting for the control cell, over 35% of outdoor gear purchasers felt that the Sportsman's Warehouse, Inc.'s logo was put out by the same company that put out the "Bass Pro Shops Sportsman's Warehouse" logo. In addition, adjusting for the control cell, 30% of outdoor gear purchasers either felt that the Sportsman's Warehouse, Inc.'s logo (1) is put out, (2) needed permission or approval, or (3) is affiliated with the same company that puts out the "Bass Pro Shops Sportsman's Warehouse" logo. In addition, respondents were asked their reasons for selecting the Sportsman's Warehouse, Inc. logo from the array. My analysis revealed that 22% of the respondents who had indicated that the Sportsman's Warehouse, Inc. logo and the "Bass Pro Shops Sportsman's Warehouse" logo had a common source or were somehow connected mentioned that similarity of the names was the reason. Thus, the survey results indicate a substantial likelihood of confusion between the petitioner's ("Bass Pro

Shops Sportsman's Warehouse') mark and the registrant's ("Sportsman's Warehouse") mark.

Michael B. Mazis
Michael B. Mazis, Ph.D.

6 September 2006
Date

**Appendix
A**

January 2005

MICHAEL B. MAZIS

WORK ADDRESS

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EDUCATION

B.S. in Economics, June, 1964
University of Pennsylvania, Wharton School

Master of Business Administration (M.B.A.) June 1966
New York University, Graduate School of Business Administration

Ph.D. in Business Administration, December 1971
The Pennsylvania State University
Major Field: Marketing
Minor Fields: Social Psychology/Quantitative Business Analysis

CURRENT POSITION

Professor of Marketing, August 1981 - present
Chair, Department of Marketing, June 1980 - August 1989; May 1998 - May 1999;
September 2004 - current
Associate Professor of Marketing, September 1979 - August 1981
The American University
Kogod School of Business
Washington, D.C.

PREVIOUS POSITIONS

Chief, Marketing and Consumer Research, July 1977 - August 1979
Office of Policy Planning and Evaluation
Federal Trade Commission
Washington, D.C.

Resident Consultant, February 1977 - July 1977
Division of National Advertising
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C.

Economist, June 1976 - February 1977
Division of Drug Advertising
Bureau of Drugs
Food and Drug Administration
Rockville, Maryland

Assistant Professor of Marketing, September 1971 - August 1974
Associate Professor of Marketing, September 1974 - June 1976
University of Florida
Gainesville, Florida

Marketing Research Analyst, September 1965 - August 1968
Warner-Lambert Pharmaceutical Company
Morris Plains, New Jersey

EDITORSHIPS

Editor, *Journal of Public Policy & Marketing*, 1992-1995

Michael B. Mazis., ed., *Journal of Public Policy & Marketing*, Vol. 10 (Number 1, 1991), special conference issue

Associate Editor, *The Journal of Consumer Affairs*, 1998-2001.

Michael B. Mazis, ed., Proceedings of 1982 American Psychological Association Conference, Division 23 (Consumer Psychology).

Louis Morris, Michael Mazis and Ivan Barofsky, eds., *Product Labeling and Health Risks*, Banbury Center, Cold Spring Harbor Laboratory, New York, 1980, 328 pages.

GRANTS

Michael B. Mazis, "Evaluating Health Warning Labels for Alcoholic Beverages," National Institute on Alcohol Abuse and Alcoholism, September 1989-September 1992 (\$700,000) and grant supplement, 1990-1992 (\$65,000).

Michael B. Mazis, "Marketing and Public Policy: Issues for the 1990's," American Marketing Association, to fund workshop in Washington, D.C., August 1990 (\$500).

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25. Michael B. Mazis, Louis A. Morris and Evelyn Gordon, "Patient Recall and Attitudes about Two Forms of Oral Contraceptive Patient Information," *Medical Care*, Vol. 16 (December 1978), pp. 1045-54.
26. Albert Wildt and Michael B. Mazis, "Determinants of Scale Response: Label vs. Position," *Journal of Marketing Research*, Vol. 15 (May 1978), pp. 261-7.
27. Michael B. Mazis and Dennis McNeill, "The Use of Marketing Research in FTC Decision making," Subhash C. Jain (ed.), *Research Frontiers in Marketing: Dialogues and Directions*, American Marketing Association, 1978, pp. 308-11.
28. Michael B. Mazis, "Overview of 'Can and Should the FTC Restrict Advertising to Children's Workshop'," in William L. Wilkie (ed.), *Advances in Consumer Research*, Vol. 6, Association for Consumer Research, 1978, pp. 3-6.

29. Kenneth L. Bernhardt and Michael B. Mazis, "Evaluating Consumer Protection Programs," in Thomas C. Kinnear, et. al. (eds.), *Public Policy Issues in Marketing*, Division of Research, Graduate School of Business Administration, University of Michigan, 1979, pp. 48-62.
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31. Michael B. Mazis and Louis A. Morris, "Evaluation of the Food and Drug Administration's Patient Package Insert Program," *Proceedings*, 1980 American Psychological Association, Division 23.
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33. Kenneth Bernhardt, Thomas Kinnear, Michael Mazis and Bonnie B. Reece, "Impact of Publicity on Corrective Advertising Effects," in Kent B. Monroe, ed., *Advances in Consumer Research*, Vol. 9, Ann Arbor, Michigan: Association of Consumer Research, 1981, pp. 414-15.
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35. Michael B. Mazis, Richard Staelin, Howard Beales and Steven Salop, "A Framework for Evaluating Consumer Information Regulation," *Journal of Marketing*, Vol. 45 (Winter 1981), pp. 11-21.
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37. Michael B. Mazis and Richard Staelin, "Information Processing Principles for Public Policy Making," *Journal of Public Policy & Marketing*, Vol. 1 (1982), pp. 3-14.
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41. Michael B. Mazis, "Analysis of Medical Consumer Behavior," in Thomas Kinnear, ed., *Advances in Consumer Research*, Vol. 11, Ann Arbor, Michigan: Association for Consumer Research, 1984, pp. 235-7.
42. Ronald Hill and Michael B. Mazis, "Measuring Emotional Responses to Advertising," in Richard Lutz, ed., *Advances in Consumer Research*, Vol. 13, Association for Consumer Research, 1986, pp. 164-69.
43. Kenneth Bernhardt, Thomas Kinnear, and Michael Mazis, "A Field Study of Corrective Advertising Effectiveness," *Journal of Public Policy & Marketing*, Vol. 5, (1986), pp. 146-62.
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48. Michael B. Mazis, Louis A. Morris and John L. Swasy, "An Evaluation of the Alcohol Warning Label: Initial Survey Results," *Journal of Public Policy & Marketing*, Vol. 10 (Spring 1991), 229-41.
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53. Michael B. Mazis, "The Cellular Telephone Cancer Scare," in *When Lightning Strikes: A How-To Crisis Manual with Classic Case Studies*, Wayne L. Pines, ed., Washington, DC: Washington Business Information, Inc., 1994, 279-290.
54. Michael B. Mazis, "Conducting Research on Nontraditional Media in the Marketing of Alcoholic Beverages," Susan Martin, ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*, Research Monograph No. 28, NIH Publication 95-3743, Washington, DC: U. S. Department of Health and Human Services, 1995, 239-244.
55. Louis A. Morris, Manoj Hastak, and Michael B. Mazis, "Consumer Comprehension of Environmental Advertising and Labeling Claims," *Journal of Consumer Affairs*, Vol. 29 (Winter 1995), 328-350.
56. Gary T. Ford and Michael B. Mazis, "Informing Buyers of Risks: An Analysis of the Marketing and Regulation of All-Terrain Vehicles," *Journal of Consumer Affairs*, Vol. 30 (Summer 1996), 90-123.
57. Michael B. Mazis, "Copy-Testing Issues in FTC Advertising Cases," in Ronald Paul Hill and Charles R. Taylor, eds., *Proceedings of the Marketing and Public Policy Conference*, Vol. 6, Chicago, IL: American Marketing Association, 1996, 122-130.
58. Michael B. Mazis, Louis A. Morris and John L. Swasy, "Longitudinal Study of Awareness, Recall, and Acceptance of Alcohol Warning Labels," *Applied Behavioral Science Review*, 4 (1996, Number 2), 111-120.
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60. Michael B. Mazis, "Marketing and Public Policy: Prospects for the Future," *Journal of Public Policy & Marketing*, Vol. 16 (Spring 1997), 139-143.
61. Michael B. Mazis and Louis A. Morris, "The Channel," in Michael S. Wolgalter, John W. Brelsford, David M. DeJoy, and Kenneth R. Laughery, eds., *Warnings and Risk Communication*, London, England: Taylor & Francis, 1999, pp. 99-122.

62. Michael B. Mazis, "FTC v. Novartis: The Return of Corrective Advertising?," *Journal of Public Policy & Marketing*, Vol. 20 (Spring, 2001), 114-122.
63. Manoj Hastak, Michael B. Mazis, and Louis A. Morris, "The Role of Consumer Surveys in Public Policy Decision Making," *Journal of Public Policy & Marketing*, Vol. 20 (Fall 2001), 170-185. (Recipient of Thomas C. Kinneary/*Journal of Public Policy & Marketing* Outstanding Article Award presented by American Marketing Association for articles published 1999-2001.)

PROFESSIONAL ACTIVITIES

Editorial Review Board, *Journal of Public Policy & Marketing*, 1982-present.

Editorial Review Board, *The Journal of Consumer Affairs*, 1998-present.

Editorial Review Board, *Journal of Current Issues & Research in Advertising*,
2002-present

Editorial Review Board, *Journal of Marketing*, 1991-1996.

Board of Directors, Association for Consumer Research (ACR), 1979-81.

Leadership Board, "Marketing and Society," American Marketing Association (AMA)
Special Interest Group, 2003-present.

Manuscript reviewer for AMA Educator's Conferences, 1976-2004; ACR Conference, 1978-1996; Marketing and Public Policy Conference, 1992-2004; Academy of Marketing Science Conference, 1994; American Academy of Advertising Conference, 1994; ACCI Conference, 2004; *Journal of Consumer Research*, 1980, 1985-1990, 2000; *Decision Sciences*, 1977 and 1980; *Journal of Marketing*, 1981, 1987, 1990-1991, 1999, 2001-2004; *Journal of Advertising*, 2002 and 2004; *Journal of Marketing Research*, 1985-1987, 1992; *Journal of Consumer Affairs*, 1989, 1991-1992, 1995, 1997; *Psychology and Marketing*, 1990 and 1997; *Journal of Business Research*, 1991; *Journal of the Academy of Marketing Science*, 1991; *International Journal of Research in Marketing*, 1992; *Safety Science*, 1992; *Alcoholism: Clinical and Experimental Research*, 1994; *Journal of Business Ethics*, 1997; *American Business Law Journal*, 1998, .

Conference Co-chair, Marketing and Public Policy Conference, Washington, DC, 2003.

Conference Director, AMA Workshop, "Marketing and Public Policy: Issues for the 1990's," Washington, D.C., August 1990.

Proposal reviewer for the National Science Foundation, 1978. Discussant at AMA Educators' Conference, 1976 and ACR Conference, 1979, 1981, and 1983. Session Chair, AMA Educators' Conference, 1981 and 1988. Discussant at International Conference on Research in the Consumer Interest, 1987 and at American Psychological Association Conference, 1986.

Invited lecturer at University of Kentucky, University of South Carolina, Duke University, University of Maryland, George Washington University, Penn State University, Georgetown University, and Queen's University.

Presented papers at AMA Educators' Conference, 1970, 1975, 1978, 1988, 1992, and 1994; ACR Conference, 1972-1973, 1977, 1979-1980, 1983, 1985, 1992, and 1994; Marketing and Public Policy Conference, 1990, 1992-2003; American Public Health Association Conference, 1991; Southern Marketing Association Conference, 1972 and 1973; American Psychological Association Conference, 1976 and 1980; Academy of

Marketing Science Conference, 1992; AMA Doctoral Consortium, 1992 and 1993; AMA Faculty Consortium on Ethics and Social Responsibility, 1995; AMA mini-conference on Environmental Issues, 1996; AMA mini-conference on Teaching of Public Policy, 1997.

Presented papers at American Assembly of Collegiate Schools of Business, 1979; Association of National Advertisers' Annual Meeting, 1979; J.C. Penney Consumer Affairs Forum, 1979; American Marketing Association (Washington Chapter), 1979; U.S. Regulatory Council's Innovative Techniques Workshop, 1980; MSI Conference: "Consumerism and Beyond: Research Perspectives on the Future Social Environment," 1982; American Advertising Federation Spring Government Affairs Conference, 1989; "The Federal Trade Commission in the 1990's," University of Notre Dame, 1989; Federal Trade Commission Marketing Symposium, 1991 and 1992; Drug Information Association, 1992; American Bar Association Conference: "How to Launch or Defend Against Competitive Challenges to Advertising Claims," 1995; National Advertising Division Workshop on Consumer Perception Communications Surveys, Council of Better Business Bureaus, 1996.

Organized special sessions at ACR Conference on children's advertising regulation, 1978, and on corrective advertising, 1980. Organized pre-conference workshop "Current Developments at the FTC and FDA" for 2000 Marketing and Public Policy Conference. Organized panel on disclosure research at FTC/NAD Conference "Disclosure Exposure," 2001.

Participated in writing, "Review of the Research Literature on the Effects of Health Warning Labels: A Report to the United States Congress," June 1987.

Wrote "The Effects of the FTC's Listerine Corrective Advertising Order" for Federal Trade Commission, 1981; "An Analysis of Homeowner Experiences with Ward-Corporation-Built Homes" for Federal Trade Commission, 1983; "An Analysis of All-Terrain Vehicle Advertising 1980-87" for Consumer Product Safety Commission, 1988; and "Summary and Analysis of Consumer Surveys on Environmental Claims in Advertising and Labeling" for Federal Trade Commission, 1992 (with Manoj Hastak and Romana Horst); "Consumers' Interpretation of Alternative Environmental Claims" for Federal Trade Commission, 1996 (with Manoj Hastak and Thomas J. Maronick).

Member of Advertising and Marketing Panel of the Surgeon General's workshop on Drunk Driving, 1989; Member of Working Group on the Effects of the Mass Media on the Use and Abuse of Alcohol, 1992.

CONSULTANCIES

Served as the FTC's principal marketing witness in *FTC vs. Novartis* in 1997, *FTC vs. Trans Union* in 1998, *FTC v. Mercury Marketing*, 2003, and *FTC v. Telebrands*, 2004. Served also as a consultant on marketing issues for Federal Trade Commission, Food and Drug Administration, Department of Justice, Consumer Product Safety Commission, and the State of California.

HONORS

The American University Award as Outstanding Faculty Administrator (1985) and for Academic Program Development (1984)
Nominated for Teacher-Scholar Award (1983, 1985, 1989, and 1993)
Kogod College Award for Scholarship (1991)
Beta Gamma Sigma and Phi Kappa Phi
AACSB Federal Faculty Fellow, 1976-77

COURSES TAUGHT

Undergraduate: Consumer Behavior, Advanced Consumer Behavior, Marketing Research, and Principles of Marketing.

Graduate: Consumer Behavior, Marketing Research, Marketing Management, Doctoral Seminar in Consumer Research, Marketing and Public Policy, and Internet Marketing.

UNIVERSITY SERVICE

Elected to University Senate, 1980-1986, 1994-95.

University Senate Vice Chair, 1982-83, Parliamentarian, 1981-82, Nominating Committee, 1982-83, Executive Committee, 1981-83, Chair, Summer Sessions Committee, 1984-85, Secretary, The American University Club, 1988-89, Finance Committee, 1991-93.

AU 85 Committee on Faculty Utilization and Development, 1981-82
AU 100 Ad Hoc Committee, 1987; AU Smoking Task Force, 1988-92

Kogod College of Business Administration Faculty Evaluation Committee, 1979-80, Strategic Planning Committee, 1984-85, Chair, M.B.A. Committee, 1984-85, Rank and Tenure Committee, 1989-91 (chair), 2001-2004, Chair, Educational Policy Committee, 1991, MBA Task Force, 1991-1992 (chair) and 1994-96, Research Committee, 1993, 1996-98 (chair), MBA Oversight Committee, 1994-95, Member, Graduate Educational Policy Committee, 1996-1997, Member, Dean Search Committee, 1995-1996, Member, MBA Admissions Committee, 1995-98, Member, Search Committee for IT Center Director, 2001, Dean's Committee on Communication, 2001-2002.

Developed "Marketing Week," 1981-1983.

Developed "Marketing Career Extravaganza," a networking event for students at five Washington, DC area universities, 2001.

OUTDOOR PRODUCTS STUDY		RESPONDENT ID#
- SCREENER -		(Card 1; 1-6)

EDITED BY: _____ FIELD SERVICE: _____ VALIDATED BY: _____

7-8/Z

CITY: (9,10,11) Atlanta (AG)106 Corpus Christi (CC)077 Dallas (CLTX)880 Denver (CLCO)864 Des Moines (CLIA)874 Jackson (FCJX)877 Littleton (FCLI)878	CITY (cont'd): (9,10,11) Memphis (WC)013 Memphis (FHR)700 Nashville (TN)029 Oklahoma (OK)005 Philadelphia (PH)002 Philadelphia (CPPH)701 San Antonio (FCSA)939 St. Louis (CLMO)866	AGE/GENDER: Males (12) 18 - 441 45 +2 Females 18 - 443 45 +4 COLOR/ROTATION: (13) Green1 Blue2 Yellow3 White4 Orange5 Lilac6
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SIGHT SCREEN FOR MALES/FEMALES 18 YEARS OF AGE OR OLDER

Hello, I'm _____ from Target Research Group, a nationwide market research organization. We're conducting a survey and I'd like to ask you a few brief questions. Let me assure you we are doing this for research purposes only and are not selling anything. We are only interested in your opinions which will be held in the strictest confidence.

NOTE: DO NOT CONTINUE INTERVIEW IF RESPONDENT HAS A HEARING, LANGUAGE OR OBVIOUS VISUAL PROBLEM.

A. (DO NOT ASK:) Record Gender

(14)
Male1
Female2

B. Please tell me which of the following groups includes your age? (READ LIST)

(15)
Under 181 →(TERMINATE, ERASE & RE-USE SCREENER)
18 - 442
45 or over3

CHECK AGE QUOTAS. IF NEEDED,
CONTINUE. IF OVER QUOTA, TERMINATE.
CIRCLE BELOW, ERASE & RE-USE SCREENER.

(DO NOT READ)→ Refused4 →(TERMINATE, ERASE & RE-USE SCREENER.)

Q.B: Under 18/Refused											
1	2	3	4	5	6	7	8	9	10		(16)
11	12	13	14	15	16	17	18	19	20		(17)
Q.B: Over Quota 18-44											
1	2	3	4	5	6	7	8	9	10		(18)
11	12	13	14	15	16	17	18	19	20		(19)
Q.B: Over Quota 45+											
1	2	3	4	5	6	7	8	9	10		(20)
11	12	13	14	15	16	17	18	19	20		(21)

MBM000138



C. Have you purchased any of the following products in the past 12 months? (READ LIST)

	<u>YES</u>	<u>NO</u>	<u>DON'T KNOW</u>	
Golf equipment or apparel.....	1.....	2.....	3.....	(22)
Fishing gear.....	<input type="checkbox"/> 1.....	2.....	3.....	(23)
Athletic shoes.....	1.....	2.....	3.....	(24)
Hunting gear.....	<input type="checkbox"/> 1.....	2.....	3.....	(25)
Sunglasses.....	1.....	2.....	3.....	(26)
Camping gear.....	<input type="checkbox"/> 1.....	2.....	3.....	(27)
Other outdoor gear.....	<input type="checkbox"/> 1.....	2.....	3.....	(28)

IF "YES" TO "FISHING GEAR," "HUNTING GEAR," "CAMPING GEAR,"
OR "OTHER OUTDOOR GEAR", CONTINUE WITH Q.D.
OTHERWISE TERMINATE. CIRCLE BELOW, ERASE AND RE-USE SCREENER.

Q.C: Not Purchased Past 12 Months

1	2	3	4	5	6	7	8	9	10	(29)
11	12	13	14	15	16	17	18	19	20	(30)

D. Do you or does any member of your household work in any of the following? (READ LIST.)

	<u>Yes</u> (31)	<u>No</u> (32)	<u>DK/ Refused</u> (33)
An advertising agency.....	<input type="checkbox"/> 1.....	1.....	1
A public relations firm.....	2.....	2.....	2
A marketing research firm.....	3.....	3.....	3
A store or company that sells outdoor gear.....	<input type="checkbox"/> 4.....	4.....	4

IF "YES" TO ANY, TERMINATE, CIRCLE BELOW.
ERASE AND REUSE SCREENER.

Q.D: Security Screen

1	2	3	4	5	6	7	8	9	10	(34)
11	12	13	14	15	16	17	18	19	20	(35)

E. Have you participated in any marketing research survey other than a political poll during the past 3 months?

- (36)
Yes 1 → (TERMINATE, CIRCLE BELOW. ERASE AND RE-USE SCREENER.)
No 2 → (CONTINUE)
Don't Know..... 3 → (TERMINATE, CIRCLE BELOW. ERASE AND RE-USE SCREENER.)

Q.E: Past Participation/Don't Know

1	2	3	4	5	6	7	8	9	10	(37)
11	12	13	14	15	16	17	18	19	20	(38)

MBM000139



F. Do you usually wear eyeglasses or contact lenses when you read?

(39)
Yes..... 1 → (ASK Q.G)
No..... 2 → (SKIP TO Q.H)

G. Are you wearing your contact lenses or do you have your glasses with you today?

(40)
Yes..... 1 → (CONTINUE)
No..... 2 → (TERMINATE, ERASE AND RE-USE SCREENER)

Q.G: Don't Have Glasses or Contact Lenses with Them										
1	2	3	4	5	6	7	8	9	10	(41)
11	12	13	14	15	16	17	18	19	20	(42)

H. I've asked you these questions to see if you are eligible for a very brief interview. Since I have something to show you, I'd like you to come with me into the interviewing facility. It will only take a few minutes of your time and we think you will find it interesting. For your time, we will give you \$2 upon completing the survey. Are you willing to be interviewed? (IF RESPONDENT REFUSES, TERMINATE, ERASE AND RE-USE SCREENER.)

(43)
Yes..... 1 → (CONTINUE)
No..... 2 → (TERMINATE, ERASE AND RE-USE SCREENER)

Q.J: Qualified Refusal										
1	2	3	4	5	6	7	8	9	10	(44)
11	12	13	14	15	16	17	18	19	20	(45)

46-79/Z; 80-1

- CIRCLE AGE/GENDER GROUP ON FRONT PAGE
- CIRCLE MAIN QUESTIONNAIRE COLOR ON FRONT PAGE
- CIRCLE CITY ON FRONT PAGE
- ESCORT RESPONDENT TO INTERVIEWING AREA

MBM000140



			GREEN				
			MALE		FEMALES		Total
			18-44	45+	18-44	45+	Green
Loc #	Cd	Locations					
AG	106	Atlanta	2	1	1	1	5
CC	077	Corpus Christi	2	1	1	1	5
CLTX	880	Dallas	1	1	1	1	4
CLCO	864	Denver	1	2	1	1	5
CLIA	874	Des Moines	1	2	1	1	5
FCJX	877	Jackson	1	2	1	1	5
FCLI	878	Littleton	1	1	1	1	4
WC	013	Memphis	1	1	1	1	4
FHR	700	Memphis	1	2	0	1	4
TN	029	Nashville	1	2	0	1	4
OK	005	Oklahoma	1	2	0	1	4
PH	002	Philadelphia	1	2	1	1	5
CPPH	701	Philadelphia	1	2	0	1	4
FCSA	939	San Antonio	2	2	0	1	5
CLMO	866	St. Louis	1	2	1	1	5
Total			18	25	10	15	68

			BLUE				
			MALE		FEMALES		Total Blue
Loc #	Cd	Locations	18-44	45+	18-44	45+	
AG	106	Atlanta	1	2	0	1	4
CC	077	Corpus Christi	1	2	0	1	4
CLTX	880	Dallas	2	2	0	1	5
CLCO	864	Denver	2	1	1	1	5
CLIA	874	Des Moines	1	1	1	1	4
FCJX	877	Jackson	1	2	1	1	5
FCLI	878	Littleton	1	2	1	1	5
WC	013	Memphis	1	2	1	1	5
FHR	700	Memphis	1	1	1	1	4
TN	029	Nashville	1	2	1	1	5
OK	005	Oklahoma	1	2	1	1	5
PH	002	Philadelphia	1	2	0	1	4
CPPH	701	Philadelphia	1	2	0	1	4
FCSA	939	San Antonio	1	2	0	1	4
CLMO	866	St. Louis	2	1	1	1	5
Total			18	26	9	15	68

		YELLOW					
		MALE		FEMALES		Total Yellow	
Loc #	Cd	Locations	18-44	45+	18-44	45+	
AG	106	Atlanta	1	2	1	1	5
CC	077	Corpus Christi	1	2	0	1	4
CLTX	880	Dallas	1	2	1	0	4
CLCO	864	Denver	1	2	1	1	5
CLIA	874	Des Moines	2	2	0	1	5
FCJX	877	Jackson	2	1	1	1	5
FCLI	878	Littleton	1	1	1	1	4
WC	013	Memphis	1	1	1	1	4
FHR	700	Memphis	1	2	1	1	5
TN	029	Nashville	2	1	1	1	5
OK	005	Oklahoma	1	2	1	1	5
PH	002	Philadelphia	1	2	0	1	4
CPPH	701	Philadelphia	1	2	1	1	5
FCSA	939	San Antonio	1	2	0	1	4
CLMO	866	St. Louis	1	2	0	1	4
Total			18	26	10	14	68

			WHITE				
			MALE		FEMALES		Total
			18-44	45+	18-44	45+	White
Loc #	Cd	Locations	18-44	45+	18-44	45+	
AG	106	Atlanta	1	2	0	1	4
CC	077	Corpus Christi	1	2	0	1	4
CLTX	880	Dallas	1	2	0	1	4
CLCO	864	Denver	1	2	0	1	4
CLIA	874	Des Moines	1	2	1	1	5
FCJX	877	Jackson	1	2	0	1	4
FCLI	878	Littleton	2	2	0	1	5
WC	013	Memphis	2	2	1	0	5
FHR	700	Memphis	1	2	1	1	5
TN	029	Nashville	1	1	1	1	4
OK	005	Oklahoma	1	1	1	1	4
PH	002	Philadelphia	1	1	1	1	4
CPPH	701	Philadelphia	1	2	1	1	5
FCSA	939	San Antonio	1	2	1	1	5
CLMO	866	St. Louis	1	2	1	1	5
Total			17	27	9	14	67

MBM000145

Loc #	Cd	Locations
AG	106	Atlanta
CC	077	Corpus Christi
CLTX	880	Dallas
CLCO	864	Denver
CLIA	874	Des Moines
FCJX	877	Jackson
FCLI	878	Littleton
WC	013	Memphis
FHR	700	Memphis
TN	029	Nashville
OK	005	Oklahoma
PH	002	Philadelphia
CPPH	701	Philadelphia
FCSA	939	San Antonio
CLMO	866	St. Louis

Total

MBM000146

NBND000146

			IIIAC				
			MALE		FEMALES		Total
Loc #	Cd	Locations	18-44	45+	18-44	45+	IIIac
AG	106	Atlanta	1	1	1	1	4
CC	077	Corpus Christi	1	2	1	1	5
CLTX	880	Dallas	1	2	1	1	5
CLCO	864	Denver	1	2	0	1	4
CLIA	874	Des Moines	1	2	0	1	4
FCJX	877	Jackson	1	2	0	1	4
FCLI	878	Littleton	1	2	1	1	5
WVC	013	Memphis	1	2	0	1	4
FHR	700	Memphis	1	2	0	1	4
TN	029	Nashville	1	2	1	0	4
OK	005	Oklahoma	2	1	1	1	5
PH	002	Philadelphia	2	2	1	1	6
CPPH	701	Philadelphia	1	2	0	1	4
FCSA	939	San Antonio	1	2	1	1	5
CLMO	866	St. Louis	1	1	1	1	4
Total			17	27	9	14	67

#06144
OUTDOOR PRODUCTS STUDY
SHOW CARDS
FOR MAIN QUESTIONNAIRE

CARD 7a

Do think one or more of these logos is put out or made by the same company as store logo shown earlier

Don't think one or more of these logos is put out or made by the same company as store logo shown earlier

No Opinion or Don't Know

CARD 8c

Do think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier

Don't think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier

No Opinion or Don't Know

CARD 9c

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier

No Opinion or Don't Know

FOR OFFICE USE ONLY	OUTDOOR PRODUCTS STUDY - MAIN QUESTIONNAIRE - - GREEN -	RESPONDENT ID#: (Card 2; 1-6)
------------------------	----------------------------------------------------------------------	--------------------------------------

COLOR - 7/1

FOR THIS VERSION YOU WILL NEED LOGOS:

R , M , C , T , L , N

SAY: Please have a seat and make yourself comfortable.

REFER TO SCREENER Q.G. IF RESPONDENT USUALLY WEARS "EYEGLASSES" THEN SAY:
If you usually wear eyeglasses when reading, please put them on now.

IF RESPONDENT DOES NOT HAVE GLASSES, THANK AND TERMINATE. RECORD BELOW.

NO GLASSES: 1 2 3 4 5 6 7 8 9 (8)

BRING RESPONDENT TO A ROOM WHERE THE DISPLAY OF
LOGOS ARE NOT VISIBLE.

PLACE LOGO H ON THE TABLE FACING RESPONDENT AND SAY:

Thank you for agreeing to participate in this study. On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

WHEN RESPONDENT INDICATES THAT HE/SHE IS FINISHED, TAKE
BACK LOGO H AND REMOVE IT FROM SIGHT.

2. About how often do you watch television? Do you watch television (READ LIST)

(9)

Every day 1

Five or six times a week 2

Three or four times a week 3

Once or twice a week 4

Or, less than once a week 5

(DO NOT READ) → Don't know 6

MBM000151



3. Which of the following TV shows do you sometimes watch? (READ LIST AND RECORD "YES" MENTIONS)

	(10)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

→(CONTINUE WITH Q.4)

- (DO NOT READ)→ None of the above.....1 →(SKIP TO Q.6)
(DO NOT READ)→ Don't know.....2 →(SKIP TO Q.6)

4. And which one type of TV show do you watch most often? (READ LIST AND RECORD "YES" MENTIONS)

	(12)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

- (DO NOT READ)→ Other (SPECIFY):
.....Y

- (DO NOT READ)→ None of the above.....1

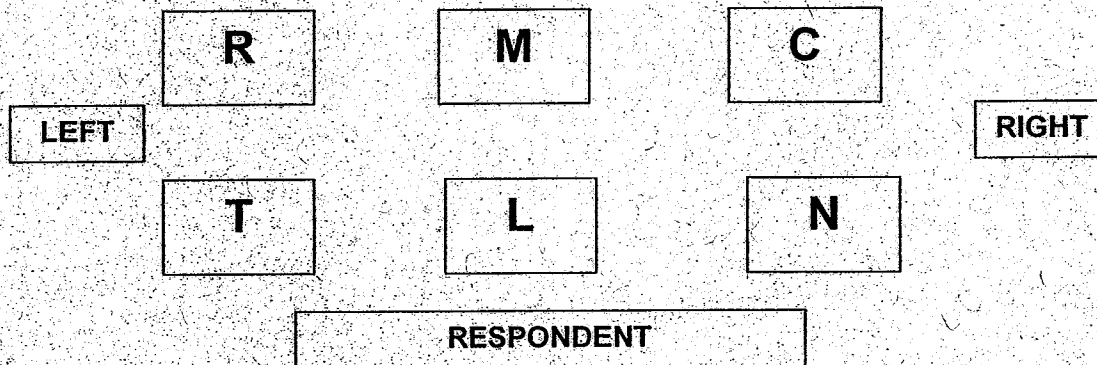
5. Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

	(14)
Better	1
About the same	2
Not as good	3
Don't know	4

- (DO NOT READ)→

MBM000152

- TAKE RESPONDENT TO DISPLAY AREA.
- THE LOGOS MUST BE SET-UP AS INDICATED BELOW:



UNCOVER THE 6 LOGOS ON THE TABLE, THEN SAY:

6. On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

- 7a. (WHEN RESPONDENT SAYS HE/SHE IS DONE, HAND RESPONDENT CARD 7a AND SAY:) If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company that puts out the store logo that I showed you earlier?

(15)

Do think one or more of these logos is put out or made by the same company as store logo shown earlier 1 → (CONTINUE WITH Q.7b)

Don't think one or more of these logos is put out or made by the same company as store logo shown earlier 2 → (SKIP TO Q.8b)

No Opinion or Don't Know 3 → (SKIP TO Q.8b)

(TAKE BACK CARD 7a)

MBM000153



7b. Which logo or logos in front of you do you think are put out by the same company that puts out the store logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.7b: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

7c. (FOR EACH LOGO MENTIONED IN Q.7b, POINT TO LOGO AND ASK:) Why do you think that this logo is put out or made by the same company that puts out the store logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.7c: REASONS MENTIONED.")

Q.7b: Logos Mentioned

Q.7c: Reasons Mentioned

Q.7b	Q.7c	21,22-
		23,24-
		25,26-
(16)		27,28-
		29,30-
Q.7b	Q.7c	31,32-
		33,34-
		35,36-
(17)		37,38-
		39,40-
Q.7b	Q.7c	41,42-
		43,44-
		45,46-
(18)		47,48-
		49,50-
Q.7b	Q.7c	51,52-
		53,54-
		55,56-
(19)		57,58-
		59,60-
Q.7b	Q.7c	61,62-
		63,64-
		65,66-
(20)		67,68-
		69,70-

71-79/2
80-2
End Card 2

REMOVE FROM VIEW ALL LOGOS MENTIONED IN ANSWER TO Q.7b.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q. 8a.

MBM000154



Start Card 3

(ASK Q.8a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8b)

- 8a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.8c)

(ASK Q.8b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9a)

- 8b. Please consider all the logos in front of you. (CONTINUE WITH Q.8c)

- 8c. (SHOW CARD 8c)

If you have an opinion, do you or don't you think that one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier..... 1 → (CONTINUE WITH Q.8d)

Don't think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier..... 2 → (SKIP TO INSTRUCTION ABOVE Q.9a)

No Opinion or Don't Know..... 3 → (SKIP TO INSTRUCTION ABOVE Q.9a)

(TAKE BACK CARD 8c)

MBM000155



8d. Which logo or logos do you think are put out by a company that received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER “Q.8d: LOGOS MENTIONED.” USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

8e. (FOR EACH LOGO MENTIONED IN Q.8d, POINT TO LOGO AND ASK:) Why do you think that the company received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER “Q.8e: REASONS MENTIONED.”)

Q.8d: Logos Mentioned

Q.8e: Reasons Mentioned

Q.8d	Q.8e	21,22-
		23,24-
		25,26-
(16)		27,28-
		29,30-
Q.8d	Q.8e	31,32-
		33,34-
		35,36-
(17)		37,38-
		39,40-
Q.8d	Q.8e	41,42-
		43,44-
		45,46-
(18)		47,48-
		49,50-
Q.8d	Q.8e	51,52-
		53,54-
		55,56-
(19)		57,58-
		59,60-
Q.8d	Q.8e	61,62-
		63,64-
		65,66-
(20)		67,68-
		69,70-

71-79/2

80-3

End Card 3

REMOVE FROM VIEW ALL PRODUCTS MENTIONED IN ANSWER TO Q.8d.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q.9a.

MBM000156



Start Card 4

(ASK Q.9a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9b)

- 9a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.9c)

(ASK Q.9b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO Q.10)

- 9b. Please consider all the logos in front of you. (CONTINUE WITH Q.9c)

(SHOW CARD 9c)

- 9c. If you have an opinion, do you or don't you think that one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 1 → (CONTINUE WITH Q.9d)

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 2 → (SKIP TO Q.10)

No Opinion or Don't Know..... 3 → (SKIP TO Q.10)

(TAKE BACK CARD 9c)

MBM000157



9d. Which logo or logos do you think are put out or made by a company that is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.9d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

9e. (FOR EACH LOGO MENTIONED, POINT TO LOGO AND ASK:) Why do you think that the company that puts out this logo is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.9e: REASONS MENTIONED.")

Q.9d: Logos Mentioned

Q.9e: Reasons Mentioned

Q.9d	Q.9e	21,22-
		23,24-
		25,26-
_____ (16)		27,28-
		29,30-
Q.9d	Q.9e	31,32-
		33,34-
		35,36-
_____ (17)		37,38-
		39,40-
Q.9d	Q.9e	41,42-
		43,44-
		45,46-
_____ (18)		47,48-
		49,50-
Q.9d	Q.9e	51,52-
		53,54-
		55,56-
_____ (19)		57,58-
		59,60-
Q.9d	Q.9e	61,62-
		63,64-
		65,66-
_____ (20)		67,68-
		69,70-

71-79/Z

80-4

End Card 4

IF ANY ITEMS REMAIN, REMOVE THOSE FROM VIEW.

- RESPONDENT AND INTERVIEWER MUST BOTH SIGN AND COMPLETE THE CERTIFICATION.
- COMPLETE RESPONDENT INFO ON NEXT PAGE.

MBM000158



10. Thank you very much. Would you please sign this Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION

I certify that I was shown several logos and was asked some questions about them.

Respondent's Signature

Date

INTERVIEWER CERTIFICATION

I certify that I carried out this interview in accordance with my interviewer instructions.

INTERVIEWER'S FULL NAME (PRINT): _____

Interviewer's Signature

Date

IF RESPONDENT REFUSES NAME OR PHONE NUMBER, PLEASE HAVE SUPERVISOR
SIGN BELOW AS ON-SITE VALIDATED.

Supervisor's Signature

Date

Respondent's Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) _____

MBM000159



FOR OFFICE
USE ONLY

OUTDOOR PRODUCTS STUDY

- MAIN QUESTIONNAIRE -
- BLUE -

RESPONDENT ID#:

(Card 2; 1-6)

FOR THIS VERSION YOU WILL NEED LOGOS:

L, R, T, C, N, M

COLOR - 7/2

SAY: Please have a seat and make yourself comfortable.

REFER TO SCREENER Q.G. IF RESPONDENT USUALLY WEARS "EYEGLASSES" THEN SAY:

If you usually wear eyeglasses when reading, please put them on now.

IF RESPONDENT DOES NOT HAVE GLASSES, THANK AND TERMINATE. RECORD BELOW.

NO GLASSES: 1 2 3 4 5 6 7 8 9 (9)

BRING RESPONDENT TO A ROOM WHERE THE DISPLAY OF
LOGOS ARE NOT VISIBLE.

PLACE LOGO H ON THE TABLE FACING RESPONDENT AND SAY:

Thank you for agreeing to participate in this study. On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

WHEN RESPONDENT INDICATES THAT HE/SHE IS FINISHED, TAKE
BACK LOGO H AND REMOVE IT FROM SIGHT.

2. About how often do you watch television? Do you watch television ... (READ LIST)

(9)

Every day1

Five or six times a week2

Three or four times a week3

Once or twice a week4

Or, less than once a week5

(DO NOT READ)→ Don't know6

MBM000160



3. Which of the following TV shows do you sometimes watch? (READ LIST AND RECORD "YES" MENTIONS)

	(10)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

→(CONTINUE WITH Q.4)

- (DO NOT READ)→ None of the above.....1 →(SKIP TO Q.6)
(DO NOT READ)→ Don't know2 →(SKIP TO Q.6)

4. And which one type of TV show do you watch most often? (READ LIST AND RECORD "YES" MENTIONS)

	(12)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

- (DO NOT READ)→ Other (SPECIFY:)Y

- (DO NOT READ)→ None of the above.....1

5. Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

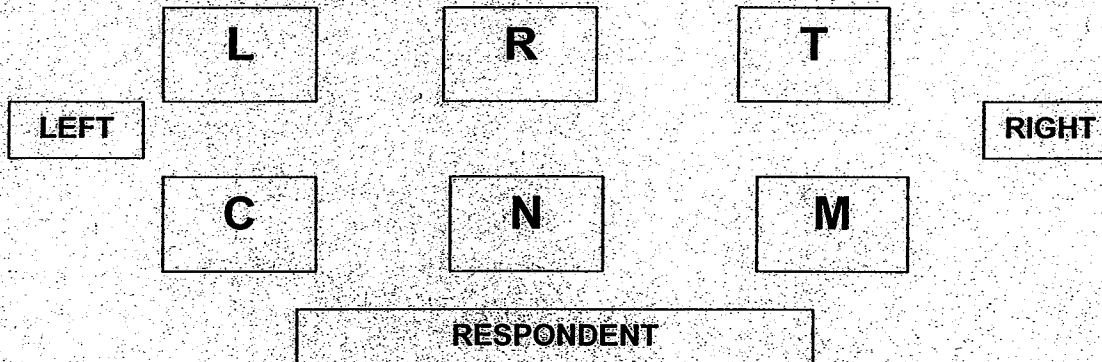
	(14)
Better	1
About the same	2
Not as good	3
Don't know	4

- (DO NOT READ)→ Don't know

MBM000161



- TAKE RESPONDENT TO DISPLAY AREA.
- THE LOGOS MUST BE SET-UP AS INDICATED BELOW:



UNCOVER THE 6 LOGOS ON THE TABLE, THEN SAY:

6. On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

- 7a. (WHEN RESPONDENT SAYS HE/SHE IS DONE, HAND RESPONDENT CARD 7a AND SAY:) If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company that puts out the store logo that I showed you earlier?

(15)

Do think one or more of these logos is put out or made by
the same company as store logo shown earlier..... 1 →(CONTINUE WITH Q.7b)

Don't think one or more of these logos is put out or made by
the same company as store logo shown earlier..... 2 →(SKIP TO Q.8b)

No Opinion or Don't Know 3 →(SKIP TO Q.8b)

(TAKE BACK CARD 7a)

MBM000162



7b. Which logo or logos in front of you do you think are put out by the same company that puts out the store logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.7b: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

7c. (FOR EACH LOGO MENTIONED IN Q.7b, POINT TO LOGO AND ASK:) Why do you think that this logo is put out or made by the same company that puts out the store logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.7c: REASONS MENTIONED.")

Q.7b: Logos Mentioned

Q.7c: Reasons Mentioned

Q.7b	Q.7c	21,22-
		23,24-
		25,26-
(16)		27,28-
		29,30-
Q.7b	Q.7c	31,32-
		33,34-
		35,36-
(17)		37,38-
		39,40-
Q.7b	Q.7c	41,42-
		43,44-
		45,46-
(18)		47,48-
		49,50-
Q.7b	Q.7c	51,52-
		53,54-
		55,56-
(19)		57,58-
		59,60-
Q.7b	Q.7c	61,62-
		63,64-
		65,66-
(20)		67,68-
		69,70-

71-79/Z

80-2

End Card 2

REMOVE FROM VIEW ALL LOGOS MENTIONED IN ANSWER TO Q.7b.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q. 8a.

MBM000163



Start Card 3

(ASK Q.8a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8b)

- 8a. For the next question, please consider only the remaining logos, not the one(s) you just named. **(NOW SKIP TO Q.8c)**

(ASK Q.8b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9a)

- 8b. Please consider all the logos in front of you. **(CONTINUE WITH Q.8c)**

- 8c. **(SHOW CARD 8c)**

If you have an opinion, do you or don't you think that one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....

1 → **(CONTINUE WITH Q.8d)**

Don't think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....

2 → **(SKIP TO INSTRUCTION ABOVE Q.9a)**

No Opinion or Don't Know.....

3 → **(SKIP TO INSTRUCTION ABOVE Q.9a)**

(TAKE BACK CARD 8c)

MBM000164



8d. Which logo or logos do you think are put out by a company that received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER “Q.8d: LOGOS MENTIONED.” USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

8e. (FOR EACH LOGO MENTIONED IN Q.8d, POINT TO LOGO AND ASK:) Why do you think that the company received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER “Q.8e: REASONS MENTIONED.”)

Q.8d: Logos Mentioned

Q.8e: Reasons Mentioned

Q.8d	Q.8e	21,22-
		23,24-
		25,26-
_____ (16)		27,28-
		29,30-
Q.8d	Q.8e	31,32-
		33,34-
		35,36-
_____ (17)		37,38-
		39,40-
Q.8d	Q.8e	41,42-
		43,44-
		45,46-
_____ (18)		47,48-
		49,50-
Q.8d	Q.8e	51,52-
		53,54-
		55,56-
_____ (19)		57,58-
		59,60-
Q.8d	Q.8e	61,62-
		63,64-
		65,66-
_____ (20)		67,68-
		69,70-

71-79/Z

80-3

End Card 3

REMOVE FROM VIEW ALL PRODUCTS MENTIONED IN ANSWER TO Q.8d.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q.9a.

MBM000165



Start Card 4

(ASK Q.9a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9b)

- 9a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.9c)

(ASK Q.9b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO Q.10)

- 9b. Please consider all the logos in front of you. (CONTINUE WITH Q.9c)

(SHOW CARD 9c)

- 9c. If you have an opinion, do you or don't you think that one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 1→(CONTINUE WITH Q.9d)

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 2→(SKIP TO Q.10)

No Opinion or Don't Know..... 3 →(SKIP TO Q.10)

(TAKE BACK CARD 9c)

MBM000166



9d. Which logo or logos do you think are put out or made by a company that is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.9d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

9e. (FOR EACH LOGO MENTIONED, POINT TO LOGO AND ASK:) Why do you think that the company that puts out this logo is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.9e: REASONS MENTIONED.")

Q.9d: Logos Mentioned

Q.9e: Reasons Mentioned

Q.9d (16)	Q.9e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.9d (17)	Q.9e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.9d (18)	Q.9e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.9d (19)	Q.9e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.9d (20)	Q.9e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z

80-4

End Card 4

IF ANY ITEMS REMAIN, REMOVE THOSE FROM VIEW.

- RESPONDENT AND INTERVIEWER MUST BOTH SIGN AND COMPLETE THE CERTIFICATION.
- COMPLETE RESPONDENT INFO ON NEXT PAGE.

MBM000167



10. Thank you very much. Would you please sign this Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION

I certify that I was shown several logos and was asked some questions about them.

Respondent's Signature

Date

INTERVIEWER CERTIFICATION

I certify that I carried out this interview in accordance with my interviewer instructions.

INTERVIEWER'S FULL NAME (PRINT): _____

Interviewer's Signature

Date

IF RESPONDENT REFUSES NAME OR PHONE NUMBER, PLEASE HAVE SUPERVISOR SIGN BELOW AS ON-SITE VALIDATED.

Supervisor's Signature

Date

Respondent's Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) _____

MBM000168



FOR OFFICE USE ONLY _____	<u>OUTDOOR PRODUCTS STUDY</u> - MAIN QUESTIONNAIRE - - YELLOW -	RESPONDENT ID#: _____ (Card 2; 1-6)
-------------------------------------	--------------------------------------------------------------------------------------------	-----------------------------------------------

COLOR - 7/3

FOR THIS VERSION YOU WILL NEED LOGOS:

N , M , L , R , T , C

SAY: Please have a seat and make yourself comfortable.

REFER TO SCREENER Q.G. IF RESPONDENT USUALLY WEARS "EYEGLASSES" THEN SAY:
If you usually wear eyeglasses when reading, please put them on now.

IF RESPONDENT DOES NOT HAVE GLASSES, THANK AND TERMINATE. RECORD BELOW.

NO GLASSES: 1 2 3 4 5 6 7 8 9 (8)

BRING RESPONDENT TO A ROOM WHERE THE DISPLAY OF
LOGOS ARE NOT VISIBLE.

PLACE LOGO H ON THE TABLE FACING RESPONDENT AND SAY:

Thank you for agreeing to participate in this study. On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

WHEN RESPONDENT INDICATES THAT HE/SHE IS FINISHED, TAKE
BACK LOGO H AND REMOVE IT FROM SIGHT.

2. About how often do you watch television? Do you watch television ... (READ LIST)

(9)

Every day.....1

Five or six times a week.....2

Three or four times a week.....3

Once or twice a week.....4

Or, less than once a week.....5

(DO NOT READ)→ Don't know.....6

MBM000169



3. Which of the following TV shows do you sometimes watch? (READ LIST AND RECORD "YES" MENTIONS)

	(10)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

→(CONTINUE WITH Q.4)

- (DO NOT READ)→ None of the above.....1 →(SKIP TO Q.6)
(DO NOT READ)→ Don't know.....2 →(SKIP TO Q.6)

4. And which one type of TV show do you watch most often? (READ LIST AND RECORD "YES" MENTIONS)

	(12)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

(DO NOT READ)→ Other (SPECIFY:)

Y

(DO NOT READ)→ None of the above.....1

5. Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

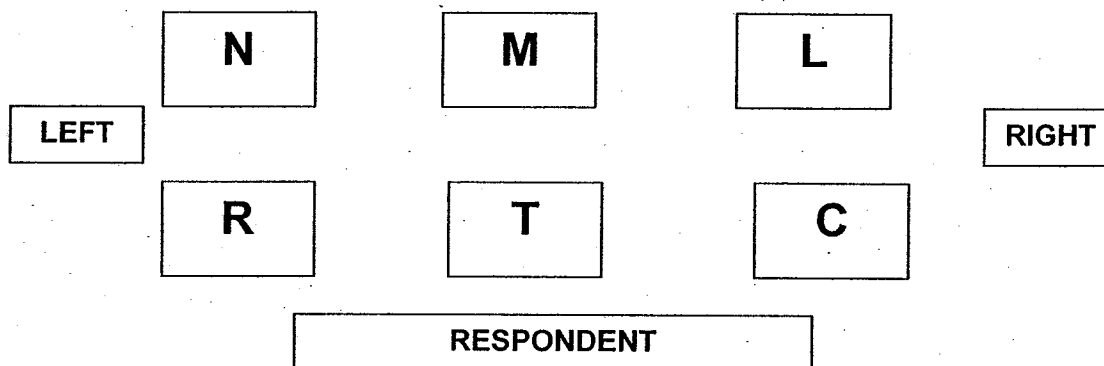
	(14)
Better	1
About the same	2
Not as good	3
Don't know	4

(DO NOT READ)→

MBM000170



- TAKE RESPONDENT TO DISPLAY AREA.
- THE LOGOS MUST BE SET-UP AS INDICATED BELOW:



UNCOVER THE 6 LOGOS ON THE TABLE, THEN SAY:

6. On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

- 7a. (WHEN RESPONDENT SAYS HE/SHE IS DONE, HAND RESPONDENT CARD 7a AND SAY:) If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company that puts out the store logo that I showed you earlier?

(15)

Do think one or more of these logos is put out or made by the same company as store logo shown earlier 1 →(CONTINUE WITH Q.7b)

Don't think one or more of these logos is put out or made by the same company as store logo shown earlier 2 →(SKIP TO Q.8b)

No Opinion or Don't Know 3 →(SKIP TO Q.8b)

(TAKE BACK CARD 7a)

MBM000171



7b. Which logo or logos in front of you do you think are put out by the same company that puts out the store logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.7b: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

7c. (FOR EACH LOGO MENTIONED IN Q.7b, POINT TO LOGO AND ASK:) Why do you think that this logo is put out or made by the same company that puts out the store logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.7c: REASONS MENTIONED.")

Q.7b: Logos Mentioned

Q.7c: Reasons Mentioned

Q.7b _____ (16)	Q.7c	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.7b _____ (17)	Q.7c	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.7b _____ (18)	Q.7c	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.7b _____ (19)	Q.7c	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.7b _____ (20)	Q.7c	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z

80-2

End Card 2

REMOVE FROM VIEW ALL LOGOS MENTIONED IN ANSWER TO Q.7b.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q. 8a.

MBM000172



Start Card 3

(ASK Q.8a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8b)

- 8a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.8c)

(ASK Q.8b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9a)

- 8b. Please consider all the logos in front of you. (CONTINUE WITH Q.8c)

- 8c. (SHOW CARD 8c)

If you have an opinion, do you or don't you think that one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....1 →(CONTINUE WITH Q.8d)

Don't think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....2 →(SKIP TO INSTRUCTION ABOVE Q.9a)

No Opinion or Don't Know.....3 →(SKIP TO INSTRUCTION ABOVE Q.9a)

(TAKE BACK CARD 8c)

MBM000173



- 8d. Which logo or logos do you think are put out by a company that received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER “Q.8d: LOGOS MENTIONED.” USE A SEPARATE LINE FOR EACH LOGO MENTIONED)
- 8e. (FOR EACH LOGO MENTIONED IN Q.8d, POINT TO LOGO AND ASK:) Why do you think that the company received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER “Q.8e: REASONS MENTIONED.”)

Q.8d: Logos Mentioned

Q.8e: Reasons Mentioned

Q.8d (16)	Q.8e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.8d (17)	Q.8e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.8d (18)	Q.8e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.8d (19)	Q.8e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.8d (20)	Q.8e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z

80-3

End Card 3

REMOVE FROM VIEW ALL PRODUCTS MENTIONED IN ANSWER TO Q.8d.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q.9a.

MBM000174



Start Card 4

(ASK Q.9a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9b)

- 9a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.9c)

(ASK Q.9b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO Q.10)

- 9b. Please consider all the logos in front of you. (CONTINUE WITH Q.9c)

(SHOW CARD 9c)

- 9c. If you have an opinion, do you or don't you think that one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 1→(CONTINUE WITH Q.9d)

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 2→(SKIP TO Q.10)

No Opinion or Don't Know 3 →(SKIP TO Q.10)

(TAKE BACK CARD 9c)

MBM000175



9d. Which logo or logos do you think are put out or made by a company that is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.9d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

9e. (FOR EACH LOGO MENTIONED, POINT TO LOGO AND ASK:) Why do you think that the company that puts out this logo is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.9e: REASONS MENTIONED.")

Q.9d: Logos Mentioned

Q.9e: Reasons Mentioned

Q.9d _____ (16)	Q.9e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.9d _____ (17)	Q.9e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.9d _____ (18)	Q.9e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.9d _____ (19)	Q.9e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.9d _____ (20)	Q.9e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z
80-4
End Card 4

IF ANY ITEMS REMAIN, REMOVE THOSE FROM VIEW.

- RESPONDENT AND INTERVIEWER MUST BOTH SIGN AND COMPLETE THE CERTIFICATION.
- COMPLETE RESPONDENT INFO ON NEXT PAGE.

MBM000176



10. Thank you very much. Would you please sign this Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION

I certify that I was shown several logos and was asked some questions about them.

Respondent's Signature

Date

INTERVIEWER CERTIFICATION

I certify that I carried out this interview in accordance with my interviewer instructions.

INTERVIEWER'S FULL NAME (PRINT): _____

Interviewer's Signature

Date

IF RESPONDENT REFUSES NAME OR PHONE NUMBER, PLEASE HAVE SUPERVISOR SIGN BELOW AS ON-SITE VALIDATED.

Supervisor's Signature

Date

Respondent's Name: _____

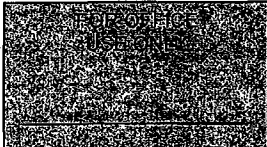
Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) _____ - _____

MBM000177



	OUTDOOR PRODUCTS STUDY	RESPONDENT ID#:
	- MAIN QUESTIONNAIRE - - WHITE -	 (Card 2; 1-6)

COLOR - 7/4

FOR THIS VERSION YOU WILL NEED LOGOS:

R , M , C , T , S , N

SAY: Please have a seat and make yourself comfortable.

REFER TO SCREENER Q.G. IF RESPONDENT USUALLY WEARS "EYEGLASSES" THEN SAY:
If you usually wear eyeglasses when reading, please put them on now.

IF RESPONDENT DOES NOT HAVE GLASSES, THANK AND TERMINATE. RECORD BELOW.

NO GLASSES: 1 2 3 4 5 6 7 8 9 (8)

BRING RESPONDENT TO A ROOM WHERE THE DISPLAY OF
LOGOS ARE NOT VISIBLE.

PLACE LOGO H ON THE TABLE FACING RESPONDENT AND SAY:

Thank you for agreeing to participate in this study. On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

WHEN RESPONDENT INDICATES THAT HE/SHE IS FINISHED, TAKE
BACK LOGO H AND REMOVE IT FROM SIGHT.

2. About how often do you watch television? Do you watch television ... (READ LIST)

(9)

Every day.....1

Five or six times a week.....2

Three or four times a week3

Once or twice a week.....4

Or, less than once a week.....5

(DO NOT READ)→ Don't know.....6

MBM000178



3. Which of the following TV shows do you sometimes watch? (READ LIST AND RECORD "YES" MENTIONS)

	(10)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

→(CONTINUE WITH Q.4)

- (DO NOT READ)→ None of the above.....1 →(SKIP TO Q.6)
(DO NOT READ)→ Don't know.....2 →(SKIP TO Q.6)

4. And which one type of TV show do you watch most often? (READ LIST AND RECORD "YES" MENTIONS)

	(12)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

- (DO NOT READ)→ Other (SPECIFY:)

Y

- (DO NOT READ)→ None of the above.....1

5. Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

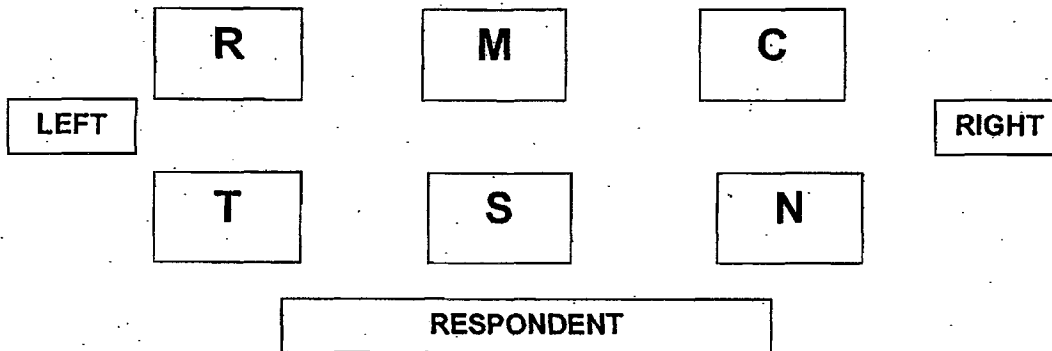
	(14)
Better	1
About the same	2
Not as good	3

- (DO NOT READ)→ Don't know.....4

MBM000179



- TAKE RESPONDENT TO DISPLAY AREA.
- THE LOGOS MUST BE SET-UP AS INDICATED BELOW:



UNCOVER THE 6 LOGOS ON THE TABLE, THEN SAY:

6. On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

- 7a. (WHEN RESPONDENT SAYS HE/SHE IS DONE, HAND RESPONDENT CARD 7a AND SAY:) If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company that puts out the store logo that I showed you earlier?

(15)

Do think one or more of these logos is put out or made by the same company as store logo shown earlier..... 1 →(CONTINUE WITH Q.7b)

Don't think one or more of these logos is put out or made by the same company as store logo shown earlier..... 2 →(SKIP TO Q.8b)

No Opinion or Don't Know..... 3 →(SKIP TO Q.8b)

(TAKE BACK CARD 7a)

MBM000180



7b. Which logo or logos in front of you do you think are put out by the same company that puts out the store logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.7b: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

7c. (FOR EACH LOGO MENTIONED IN Q.7b, POINT TO LOGO AND ASK:) Why do you think that this logo is put out or made by the same company that puts out the store logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.7c: REASONS MENTIONED.")

Q.7b: Logos Mentioned

Q.7c: Reasons Mentioned

<u>Q.7b</u> _____(16)	<u>Q.7c</u>	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
<u>Q.7b</u> _____(17)	<u>Q.7c</u>	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
<u>Q.7b</u> _____(18)	<u>Q.7c</u>	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
<u>Q.7b</u> _____(19)	<u>Q.7c</u>	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
<u>Q.7b</u> _____(20)	<u>Q.7c</u>	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z

80-2

End Card 2

REMOVE FROM VIEW ALL LOGOS MENTIONED IN ANSWER TO Q.7b.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q. 8a.

MBM000181



Start Card 3

(ASK Q.8a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8b)

- 8a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.8c)

(ASK Q.8b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9a)

- 8b. Please consider all the logos in front of you. (CONTINUE WITH Q.8c)

- 8c. (SHOW CARD 8c)

If you have an opinion, do you or don't you think that one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....1 →(CONTINUE WITH Q.8d)

Don't think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....2 →(SKIP TO INSTRUCTION ABOVE Q.9a)

No Opinion or Don't Know.....3 →(SKIP TO INSTRUCTION ABOVE Q.9a)

(TAKE BACK CARD 8c)

MBM000182



8d. Which logo or logos do you think are put out by a company that received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER “Q.8d: LOGOS MENTIONED.” USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

8e. (FOR EACH LOGO MENTIONED IN Q.8d, POINT TO LOGO AND ASK:) Why do you think that the company received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER “Q.8e: REASONS MENTIONED.”)

Q.8d: Logos Mentioned

Q.8e: Reasons Mentioned

Q.8d _____ (16)	Q.8e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.8d _____ (17)	Q.8e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.8d _____ (18)	Q.8e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.8d _____ (19)	Q.8e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.8d _____ (20)	Q.8e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z
80-3

End Card 3

REMOVE FROM VIEW ALL PRODUCTS MENTIONED IN ANSWER TO Q.8d.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q.9a.

MBM000183



Start Card 4

(ASK Q.9a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9b)

- 9a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.9c)

(ASK Q.9b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO Q.10)

- 9b. Please consider all the logos in front of you. (CONTINUE WITH Q.9c)

(SHOW CARD 9c)

- 9c. If you have an opinion, do you or don't you think that one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 1 → (CONTINUE WITH Q.9d)

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 2 → (SKIP TO Q.10)

No Opinion or Don't Know..... 3 → (SKIP TO Q.10)

(TAKE BACK CARD 9c)

MBM000184



9d. Which logo or logos do you think are put out or made by a company that is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.9d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

9e. (FOR EACH LOGO MENTIONED, POINT TO LOGO AND ASK:) Why do you think that the company that puts out this logo is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.9e: REASONS MENTIONED.")

Q.9d: Logos Mentioned

Q.9e: Reasons Mentioned

Q.9d _____ (16)	Q.9e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.9d _____ (17)	Q.9e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.9d _____ (18)	Q.9e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.9d _____ (19)	Q.9e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.9d _____ (20)	Q.9e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z

80-4

End Card 4

IF ANY ITEMS REMAIN, REMOVE THOSE FROM VIEW.

- RESPONDENT AND INTERVIEWER MUST BOTH SIGN AND COMPLETE THE CERTIFICATION.
- COMPLETE RESPONDENT INFO ON NEXT PAGE.

MBM000185



10. Thank you very much. Would you please sign this Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION

I certify that I was shown several logos and was asked some questions about them.

Respondent's Signature

Date

INTERVIEWER CERTIFICATION

I certify that I carried out this interview in accordance with my interviewer instructions.

INTERVIEWER'S FULL NAME (PRINT): _____

Interviewer's Signature

Date

IF RESPONDENT REFUSES NAME OR PHONE NUMBER, PLEASE HAVE SUPERVISOR SIGN BELOW AS ON-SITE VALIDATED.

Supervisor's Signature

Date

Respondent's Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) _____

MBM000186



FOR OFFICE USE ONLY	OUTDOOR PRODUCTS STUDY - MAIN QUESTIONNAIRE - - ORANGE -	RESPONDENT ID#: (Card 2: 1-6)
------------------------	-----------------------------------------------------------------------	--------------------------------------

COLOR - 7/5

FOR THIS VERSION YOU WILL NEED LOGOS:

S, R, T, C, N, M

SAY: Please have a seat and make yourself comfortable.

REFER TO SCREENER Q.G. IF RESPONDENT USUALLY WEARS "EYEGLASSES" THEN SAY:

If you usually wear eyeglasses when reading, please put them on now.

IF RESPONDENT DOES NOT HAVE GLASSES, THANK AND TERMINATE. RECORD BELOW.

NO GLASSES 1 2 3 4 5 6 7 8 9 (8)

BRING RESPONDENT TO A ROOM WHERE THE DISPLAY OF
LOGOS ARE NOT VISIBLE.

PLACE LOGO H ON THE TABLE FACING RESPONDENT AND SAY:

Thank you for agreeing to participate in this study. On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

WHEN RESPONDENT INDICATES THAT HE/SHE IS FINISHED, TAKE
BACK LOGO H AND REMOVE IT FROM SIGHT.

2 About how often do you watch television? Do you watch television ... (READ LIST)

(9)

Every day 1

Five or six times a week 2

Three or four times a week 3

Once or twice a week 4

Or, less than once a week 5

(DO NOT READ) → Don't know 6

MBM000187



3. Which of the following TV shows do you sometimes watch? (READ LIST AND RECORD "YES" MENTIONS)

	(10)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6 → (CONTINUE WITH Q.4)
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X
	(11)

(DO NOT READ) → None of the above 1 → (SKIP TO Q.6)

(DO NOT READ) → Don't know 2 → (SKIP TO Q.6)

4. And which one type of TV show do you watch most often? (READ LIST AND RECORD "YES" MENTIONS)

	(12)
Sports	1
Talk shows	2
Local news	3
Network or cable news	4
Reality shows	5
Soap operas	6
Quiz shows	7
Comedy series	8
Drama series	9
Children's shows	0
Movies	X

(DO NOT READ) → Other (SPECIFY):

Y

(13)

(DO NOT READ) → None of the above 1

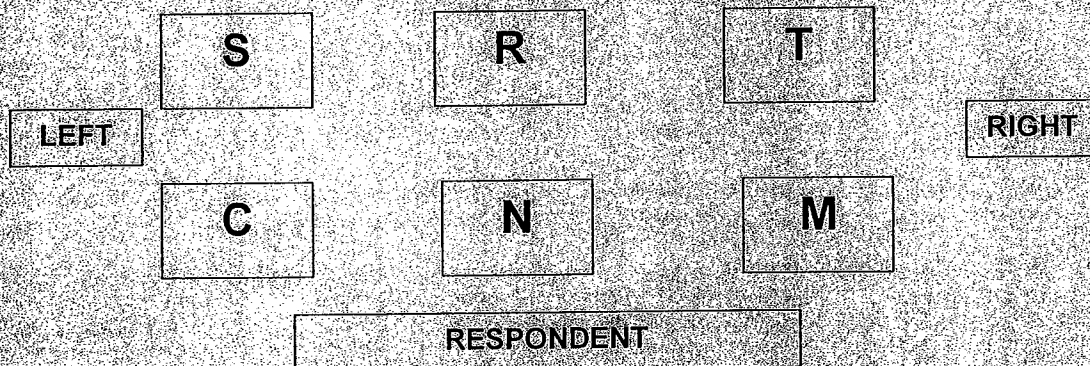
5. Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

	(14)
Better	1
About the same	2
Not as good	3

(DO NOT READ) → Don't know 4

MBM000188

- TAKE RESPONDENT TO DISPLAY AREA.
- THE LOGOS MUST BE SET-UP AS INDICATED BELOW:



UNCOVER THE 6 LOGOS ON THE TABLE, THEN SAY:

6. On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

- 7a. (WHEN RESPONDENT SAYS HE/SHE IS DONE, HAND RESPONDENT CARD 7a AND SAY:) If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company that puts out the store logo that I showed you earlier?

(15)

- Do think one or more of these logos is put out or made by the same company as store logo shown earlier 1 → (CONTINUE WITH Q.7b)
- Don't think one or more of these logos is put out or made by the same company as store logo shown earlier 2 → (SKIP TO Q.8b)
- No Opinion or Don't Know 3 → (SKIP TO Q.8b)

(TAKE BACK CARD 7a)

MBM000189



7b. Which logo or logos in front of you do you think are put out by the same company that puts out the store logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.7b: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

7c. (FOR EACH LOGO MENTIONED IN Q.7b, POINT TO LOGO AND ASK:) Why do you think that this logo is put out or made by the same company that puts out the store logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.7c: REASONS MENTIONED.")

Q.7b: Logos Mentioned

Q.7c: Reasons Mentioned

Q.7b	Q.7c	21-22
		23-24
		25-26
(16)		27-28
		29-30
Q.7b	Q.7c	31-32
		33-34
		35-36
(17)		37-38
		39-40
Q.7b	Q.7c	41-42
		43-44
		45-46
(18)		47-48
		49-50
Q.7b	Q.7c	51-52
		53-54
		55-56
(19)		57-58
		59-60
Q.7b	Q.7c	61-62
		63-64
		65-66
(20)		67-68
		69-70

71-79/Z

80-2

End Card 2

REMOVE FROM VIEW ALL LOGOS MENTIONED IN ANSWER TO Q.7b.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q. 8a.

MBM000190



Start Card 3

(ASK Q.8a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8b)

- 8a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.8c)

(ASK Q.8b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9a)

- 8b. Please consider all the logos in front of you. (CONTINUE WITH Q.8c)

- 8c. (SHOW CARD 8c)

If you have an opinion, do you or don't you think that one or more of the companies that put out these logos received -- or needed to receive -- permission or approval from the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos received -- or needed to receive -- permission or approval from the company that puts out the logo shown earlier 1 → (CONTINUE WITH Q.8d)

Don't think one or more of the companies that put out these logos received -- or needed to receive -- permission or approval from the company that puts out the logo shown earlier 2 → (SKIP TO INSTRUCTION ABOVE Q.9a)

No Opinion or Don't Know 3 → (SKIP TO INSTRUCTION ABOVE Q.9a)

(TAKE BACK CARD 8c)

MBM000191



8d. Which logo or logos do you think are put out by a company that received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.8d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

8e. (FOR EACH LOGO MENTIONED IN Q.8d, POINT TO LOGO AND ASK:) Why do you think that the company received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.8e: REASONS MENTIONED.")

Q.8d: Logos Mentioned

Q.8e: Reasons Mentioned

Q.8d	Q.8e	21,22-
		23,24-
		25,26-
(16)		27,28-
		29,30-
Q.8d	Q.8e	31,32-
		33,34-
		35,36-
(17)		37,38-
		39,40-
Q.8d	Q.8e	41,42-
		43,44-
		45,46-
(18)		47,48-
		49,50-
Q.8d	Q.8e	51,52-
		53,54-
		55,56-
(19)		57,58-
		59,60-
Q.8d	Q.8e	61,62-
		63,64-
		65,66-
(20)		67,68-
		69,70-

71-79/Z

80-3

End Card 3

REMOVE FROM VIEW ALL PRODUCTS MENTIONED IN ANSWER TO Q.8d.

• IF NONE REMAIN, SKIP TO Q.10.

• IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q.9a.

MBM000192



Start Card 4

(ASK Q. 9a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q. 9b)

9a For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q. 9c)

(ASK Q. 9b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO Q. 10)

9b Please consider all the logos in front of you. (CONTINUE WITH Q. 9c)

(SHOW CARD 9c)

9c If you have an opinion, do you or don't you think that one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier 1 → (CONTINUE WITH Q. 9d)

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier 2 → (SKIP TO Q. 10)

No Opinion or Don't Know 3 → (SKIP TO Q. 10)

(TAKE BACK CARD 9c)

MBM000193



9d Which logo or logos do you think are put out or made by a company that is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.9d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

9e (FOR EACH LOGO MENTIONED, POINT TO LOGO AND ASK:) Why do you think that the company that puts out this logo is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: "Any other reasons?") (RECORD VERBATIM UNDER "Q.9e: REASONS MENTIONED.")

Q.9d: Logos Mentioned

Q.9e: Reasons Mentioned

Q.9d	Q.9e	21-22
		23-24
		25-26
(16)		27-28
		29-30
Q.9d	Q.9e	31-32
		33-34
		35-36
(17)		37-38
		39-40
Q.9d	Q.9e	41-42
		43-44
		45-46
(18)		47-48
		49-50
Q.9d	Q.9e	51-52
		53-54
		55-56
(19)		57-58
		59-60
Q.9d	Q.9e	61-62
		63-64
		65-66
(20)		67-68
		69-70

71-79/2

80-4

End Card 4

IF ANY ITEMS REMAIN, REMOVE THOSE FROM VIEW

- RESPONDENT AND INTERVIEWER MUST BOTH SIGN AND COMPLETE THE CERTIFICATION
- COMPLETE RESPONDENT INFO ON NEXT PAGE

MBM000194



10. Thank you very much. Would you please sign this Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION

I certify that I was shown several logos and was asked some questions about them.

Respondent's Signature

Date

INTERVIEWER CERTIFICATION

I certify that I carried out this interview in accordance with my interviewer instructions.

INTERVIEWER'S FULL NAME (PRINT): _____

Interviewer's Signature

Date

IF RESPONDENT REFUSES NAME OR PHONE NUMBER, PLEASE HAVE SUPERVISOR SIGN BELOW AS ON-SITE VALIDATED.

Supervisor's Signature

Date

Respondent's Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number (_____) _____

MBM000195



FOR OFFICE USE ONLY	OUTDOOR PRODUCTS STUDY - MAIN QUESTIONNAIRE - - LILAC -	RESPONDENT ID#: (Card 2; 1-6)
------------------------	----------------------------------------------------------------------	--------------------------------------

COLOR - 7/6

FOR THIS VERSION YOU WILL NEED LOGOS:

N , M , S , R , T , C

SAY: Please have a seat and make yourself comfortable.

REFER TO SCREENER Q.G. IF RESPONDENT USUALLY WEARS "EYEGLASSES" THEN SAY:
If you usually wear eyeglasses when reading, please put them on now.

IF RESPONDENT DOES NOT HAVE GLASSES, THANK AND TERMINATE. RECORD BELOW.

NO GLASSES: 1 2 3 4 5 6 7 8 9 (8)

BRING RESPONDENT TO A ROOM WHERE THE DISPLAY OF
LOGOS ARE NOT VISIBLE.

PLACE LOGO H ON THE TABLE FACING RESPONDENT AND SAY:

Thank you for agreeing to participate in this study. On the table in front of you is a logo that is associated with a certain store. You may or may not be familiar with this logo or the store. I'd like you to look at this store logo the way you would if you were considering buying some products from the store. Take as long as you normally would to examine the logo.

WHEN RESPONDENT INDICATES THAT HE/SHE IS FINISHED, TAKE
BACK LOGO H AND REMOVE IT FROM SIGHT.

2. About how often do you watch television? Do you watch television ... (READ LIST)

(9)

Every day.....1

Five or six times a week.....2

Three or four times a week3

Once or twice a week.....4

Or, less than once a week.....5

(DO NOT READ)→ Don't know6

MBM000196



3. Which of the following TV shows do you sometimes watch? (READ LIST AND RECORD "YES" MENTIONS)

- (10)
- | | |
|-----------------------------|---|
| Sports | 1 |
| Talk shows | 2 |
| Local news | 3 |
| Network or cable news | 4 |
| Reality shows | 5 |
| Soap operas | 6 |
| Quiz shows | 7 |
| Comedy series | 8 |
| Drama series | 9 |
| Children's shows | 0 |
| Movies | X |
- (CONTINUE WITH Q.4)

- (DO NOT READ)→ None of the above.....1 → (SKIP TO Q.6)
- (DO NOT READ)→ Don't know2 → (SKIP TO Q.6)

4. And which one type of TV show do you watch most often? (READ LIST AND RECORD "YES" MENTIONS)

- (12)
- | | |
|-----------------------------|---|
| Sports | 1 |
| Talk shows | 2 |
| Local news | 3 |
| Network or cable news | 4 |
| Reality shows | 5 |
| Soap operas | 6 |
| Quiz shows | 7 |
| Comedy series | 8 |
| Drama series | 9 |
| Children's shows | 0 |
| Movies | X |

- (DO NOT READ)→ Other (SPECIFY:)
- _____ Y

- (DO NOT READ)→ None of the above.....1

5. Do you think that television programs today are better, about the same or not as good as the programs that were on the air several years ago?

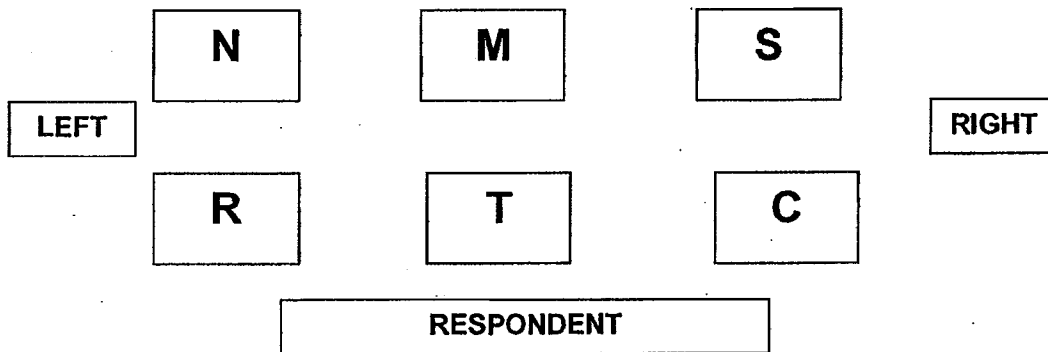
- (14)
- | | |
|----------------------|---|
| Better | 1 |
| About the same | 2 |
| Not as good | 3 |
| Don't know | 4 |

- (DO NOT READ)→ Don't know.....4

MBM000197



- TAKE RESPONDENT TO DISPLAY AREA.
- THE LOGOS MUST BE SET-UP AS INDICATED BELOW:



UNCOVER THE 6 LOGOS ON THE TABLE, THEN SAY:

6. On the table in front of you are a number of logos associated with certain stores. You may or may not be familiar with these logos or the stores. I'd like you to look at these store logos the way you would if you were considering buying some products from these stores. Take as long as you normally would to examine the logos.

After you look at these logos, I'll ask you some questions. Also, when you answer any questions, please don't guess. "I don't know" is a perfectly acceptable answer.

- 7a. (WHEN RESPONDENT SAYS HE/SHE IS DONE, HAND RESPONDENT CARD 7a AND SAY:) If you have an opinion, do you or don't you think that one or more of the logos in front of you is put out or made by the same company that puts out the store logo that I showed you earlier?

(15)

Do think one or more of these logos is put out or made by the same company as store logo shown earlier 1 →(CONTINUE WITH Q.7b)

Don't think one or more of these logos is put out or made by the same company as store logo shown earlier 2 →(SKIP TO Q.8b)

No Opinion or Don't Know 3 →(SKIP TO Q.8b)

(TAKE BACK CARD 7a)

MBM000198



7b. Which logo or logos in front of you do you think are put out by the same company that puts out the store logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.7b: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

7c. (FOR EACH LOGO MENTIONED IN Q.7b, POINT TO LOGO AND ASK:) Why do you think that this logo is put out or made by the same company that puts out the store logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.7c: REASONS MENTIONED.")

Q.7b: Logos Mentioned

Q.7c: Reasons Mentioned

<u>Q.7b</u> _____(16)	<u>Q.7c</u>	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
<u>Q.7b</u> _____(17)	<u>Q.7c</u>	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
<u>Q.7b</u> _____(18)	<u>Q.7c</u>	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
<u>Q.7b</u> _____(19)	<u>Q.7c</u>	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
<u>Q.7b</u> _____(20)	<u>Q.7c</u>	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z
80-2
End Card 2

REMOVE FROM VIEW ALL LOGOS MENTIONED IN ANSWER TO Q.7b.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q. 8a.

MBM000199



Start Card 3

(ASK Q.8a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.8b)

- 8a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.8c)

(ASK Q.8b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9a)

- 8b. Please consider all the logos in front of you. (CONTINUE WITH Q.8c)

- 8c. (SHOW CARD 8c)

If you have an opinion, do you or don't you think that one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....1 →(CONTINUE WITH Q.8d)

Don't think one or more of the companies that put out these logos received – or needed to receive – permission or approval from the company that puts out the logo shown earlier.....2 →(SKIP TO INSTRUCTION ABOVE Q.9a)

No Opinion or Don't Know3 →(SKIP TO INSTRUCTION ABOVE Q.9a)

(TAKE BACK CARD 8c)

MBM000200



8d. Which logo or logos do you think are put out by a company that received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.8d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

8e. (FOR EACH LOGO MENTIONED IN Q.8d, POINT TO LOGO AND ASK:) Why do you think that the company received – or needed to receive – permission or approval from the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.8e: REASONS MENTIONED.")

Q.8d: Logos Mentioned

Q.8e: Reasons Mentioned

Q.8d _____ (16)	Q.8e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.8d _____ (17)	Q.8e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.8d _____ (18)	Q.8e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.8d _____ (19)	Q.8e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.8d _____ (20)	Q.8e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/2

80-3

End Card 3

REMOVE FROM VIEW ALL PRODUCTS MENTIONED IN ANSWER TO Q.8d.

- IF NONE REMAIN, SKIP TO Q.10.
- IF ONE OR MORE REMAINS, SKIP TO INSTRUCTION ABOVE Q.9a.

MBM000201



Start Card 4

(ASK Q.9a IF "1 TO 5" LOGOS REMAIN, OTHERWISE SKIP TO INSTRUCTION ABOVE Q.9b)

- 9a. For the next question, please consider only the remaining logos, not the one(s) you just named. (NOW SKIP TO Q.9c)

(ASK Q.9b IF "ALL 6" LOGOS REMAIN, OTHERWISE SKIP TO Q.10)

- 9b. Please consider all the logos in front of you. (CONTINUE WITH Q.9c)

(SHOW CARD 9c)

- 9c. If you have an opinion, do you or don't you think that one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier?

(15)

Do think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 1→(CONTINUE WITH Q.9d)

Don't think one or more of the companies that put out these logos is affiliated with, is connected to, or is part of the company that puts out the logo shown earlier..... 2→(SKIP TO Q.10)

No Opinion or Don't Know 3 →(SKIP TO Q.10)

(TAKE BACK CARD 9c)

MBM000202



9d. Which logo or logos do you think are put out or made by a company that is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (RECORD THE LETTER OF EACH LOGO MENTIONED BELOW UNDER "Q.9d: LOGOS MENTIONED." USE A SEPARATE LINE FOR EACH LOGO MENTIONED)

9e. (FOR EACH LOGO MENTIONED, POINT TO LOGO AND ASK:) Why do you think that the company that puts out this logo is affiliated with, is connected to, or is part of the company that puts out the logo that I showed you earlier? (PROBE ONCE WITH: Any other reasons?) (RECORD VERBATIM UNDER "Q.9e: REASONS MENTIONED.")

Q.9d: Logos Mentioned

Q.9e: Reasons Mentioned

Q.9d _____ (16)	Q.9e	21,22-
		23,24-
		25,26-
		27,28-
		29,30-
Q.9d _____ (17)	Q.9e	31,32-
		33,34-
		35,36-
		37,38-
		39,40-
Q.9d _____ (18)	Q.9e	41,42-
		43,44-
		45,46-
		47,48-
		49,50-
Q.9d _____ (19)	Q.9e	51,52-
		53,54-
		55,56-
		57,58-
		59,60-
Q.9d _____ (20)	Q.9e	61,62-
		63,64-
		65,66-
		67,68-
		69,70-

71-79/Z
80-4
End Card 4

IF ANY ITEMS REMAIN, REMOVE THOSE FROM VIEW.

- RESPONDENT AND INTERVIEWER MUST BOTH SIGN AND COMPLETE THE CERTIFICATION.
- COMPLETE RESPONDENT INFO ON NEXT PAGE.

MBM000203



10. Thank you very much. Would you please sign this Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION

I certify that I was shown several logos and was asked some questions about them.

Respondent's Signature

Date

INTERVIEWER CERTIFICATION

I certify that I carried out this interview in accordance with my interviewer instructions.

INTERVIEWER'S FULL NAME (PRINT): _____

Interviewer's Signature

Date

IF RESPONDENT REFUSES NAME OR PHONE NUMBER, PLEASE HAVE SUPERVISOR SIGN BELOW AS ON-SITE VALIDATED.

Supervisor's Signature

Date

Respondent's Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) _____ - _____

MBM000204



Appendix
D

M

L.L.Bean

R



C

Cabela's
WHERE THE ADVENTURE BEGINS
AND THE FUN NEVER ENDS

I

EVERY SEASON STARTS AT
DICK'S
SPORTING GOODS

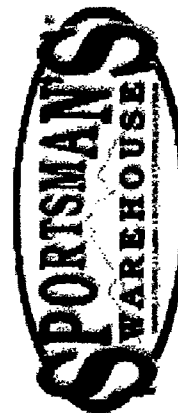
S



N

SCHEELS

L



H



Sportsman's Warehouse

TARGET RESEARCH GROUP

Study #06144
Outdoor Products Study
August, 2006

SUPERVISOR INSTRUCTIONS**OVERVIEW**

This is a central location study to be conducted in a permanent enclosed mall facility.

You will be sight screening for males and females on the mall who are 18 years of age or older and have purchased fishing, hunting, camping or other outdoor gear in the past 12 months. Qualified respondents will be escorted back to the interviewing facility and be shown one logo individually, and then will be shown a display with 6 logos and asked a series of questions.

This is a six cell test. Each cell will see a different display.

STUDY MATERIALS

- Screeners
- Green, Blue, Yellow, White, Orange and Lilac Main Questionnaires
- Practice Interviews (Pink)
- 8 logos labeled: "L", "S", "N", "M", "H", "R", "T", "C"
- Interviewer Instructions
- Master Quota sheet
- Security Procedures
- Supervisor Instructions
- Respondent Number Worksheet
- Study/Shipping Schedule
- Shipping Instructions
- Validation Forms
- Daily Report Forms
- Audio Tape (You supply)—to tape the Briefing

Quota/Assignment

You are to complete a total of 27 interviews as detailed on your Master Quota sheets. See your Master quota sheet for specific gender and age breaks for each color main questionnaire.

- Males 18-44
- Males 45+
- Females 18-44
- Females 45+

Overview

You were sent 8 different logos, one logo (H) is shown to the respondent first and then 6 other logos are displayed.

There are 6 cells:

- In the GREEN, BLUE and YELLOW Cells, logo "L" will be included in the display of 6 logos.
- In the WHITE, ORANGE and LILAC Cells, logo "S" will be included in the display of 6 logos.

While interviewing a respondent in the GREEN, BLUE and YELLOW Cells, logo "S" should be removed from the room or kept out of sight from the respondent. While interviewing a respondent in the WHITE, ORANGE and LILAC Cells, logo "L" should be removed from the room or kept out of sight from the respondent.

Logos "S" and Logos "L" are never to be shown at the same time.

SCREENER/ELIGIBILITY

Eligible respondents are males and females who are 18 years of age or more:

- QA/B: Respondent's age/gender is needed to complete a quota
- QC: Has purchased fishing gear, hunting gear, camping gear or other outdoor gear in the past 12 months.
- QD: Does not work or have anyone living in their household work in an advertising agency or public relations, in a marketing research firm, in a store or company that sells outdoor gear.
- QE: Has not participated in a survey in the past 3 months
- QF/G: Has glasses or contact lenses with them if needed.
- QH: Respondent agrees to be interviewed

MAIN QUESTIONNAIRES/ DISPLAY

Before the interview begins:

- Be sure you have the correct logos for the display for the main questionnaire you are using.
- All logos must be kept covered and out of sight until they are needed
- Escort the respondent into the interviewing room and close the door.
- Respondent should be standing at the table, facing the logos.
- If respondent indicated that he/she wears glasses or contact lenses for reading, be sure that he/she is wearing them.
- Only the respondent and the interviewer are to be in the interviewing room.

You have received a supply of 6 main questionnaires: Green, Blue, Yellow, White, Orange and Lilac. Each respondent will be shown one individual logo ("H"), prior to viewing the display. Each respondent will then be shown one display consisting of 6 logos (depending on the color of the questionnaire being administered.) You may complete your quota by cell color or you may vary cell color in order to better complete your quota. Continue interviewing until all versions are completed.

The display shown to the respondent prior to Question 6 on the Main Questionnaire will have a total of six (6) logos. These logos will be placed in a different order, depending on what color is being administered.

Logos labeled "T", "N", "M", "R" and "C" will be shown in ALL Cells.

The 6 logos for the display, are to be placed, in two rows, side-by-side flat on the table, left to right as they face the respondent in the order specified in the main questionnaire.

The logos should be placed face up AND COVERED until Q.6 of the main questionnaire.

DISPLAY SETUP

At Q.1, everyone sees logo "H".

For Q.6, the display of 6 logos is different for each of the six color questionnaires:

GREEN:	<u>R</u> <u>I</u>	<u>M</u> <u>L</u>	<u>C</u> <u>N</u>
BLUE:	<u>L</u> <u>C</u>	<u>R</u> <u>N</u>	<u>T</u> <u>M</u>
YELLOW:	<u>N</u> <u>R</u>	<u>M</u> <u>T</u>	<u>L</u> <u>C</u>
WHITE:	<u>R</u> <u>T</u>	<u>M</u> <u>S</u>	<u>C</u> <u>N</u>
ORANGE:	<u>S</u> <u>C</u>	<u>R</u> <u>N</u>	<u>T</u> <u>M</u>
LILAC:	<u>N</u> <u>R</u>	<u>M</u> <u>T</u>	<u>S</u> <u>C</u>

SECURITY

All materials related to this study are the property of Target Research Group and our client. You are responsible for all materials being used on this study. All materials are to be kept in a secure location, accessible ONLY to those working on the test and out of sight of anyone not directly involved in the study.

No one representing Target Research Group or our client is to be admitted to the facility or have access to the materials without your first calling Target Research Group to confirm. Further, no one is to be permitted access to the facility or materials without showing satisfactory identification. It is also essential that no person on your staff discuss the study or its topic outside of your offices.

SCREENING LOCATION

If permitted, you are to be stationed throughout the mall to provide the most efficient screening coverage. You must screen for this project only. You may not "double screen" or "piggyback."

DO NOT INTERVIEW ANYONE WITH A HEARING, LANGUAGE OR SIGHT DISABILITY.

INTERVIEW PROCEDURES

You must conduct the interview in a room with a door. The respondent should not be able to hear any sounds from outside the room or have visual interference from another interviewing station.

STAFFING

Each interviewer working on this study should not complete less than 3 interviews or more than 9.

- All interviewers while screening and interviewing on this study are not to be screening or interviewing on any other study.
- You will need experienced interviewers who are good at administering, probing and recording open-ended responses. You may not use an inexperienced or "new" interviewer. They must write legibly.
- **Interviewers are to record the responses verbatim.** Interviewers are to record **ONLY** the answers to the question. Do not record "thoughts or comments" that may be said aloud by the respondent. This means absolutely **NO** paraphrasing.

This questionnaire is largely an open-ended interview. Recording comments verbatim and probing ONLY where indicated are very important and should be monitored carefully. Without proper recording of the verbatim responses, this questionnaire becomes worthless. **A supervisor MUST check the interviews as they are being done.** If you see that a certain interviewer is not recording the answers verbatim or whose writing is not legible, re-brief and replace.

All work should be edited as soon as the interview is completed in order to spot errors and quickly bring them to an interviewer's attention.

BRIEFING AND PRACTICE MATERIALS

Practice Interviews

All personnel involved in the study must attend a personal briefing. **The supervisor must record the briefing on audio tape and return it to us with your final shipment of Screener/Questionnaires.** All interviewers must do at least one Practice Interview. Should it be necessary to assign to this study any interviewers who did not attend the original briefing, then an additional formal briefing of that staff **MUST** be held by a qualified supervisor.

All Practice Interviews must be monitored and reviewed by the supervisor – and any problems cleared up – before actual interviewing begins. It is your responsibility:

- 1) To check each interview to be sure that each interviewer completely understands how to administer the screener and main questionnaire and to obtain the information needed to contact the respondent again for validation, and
- 2) To check each interview to be sure that all skip patterns are followed and that each interviewer completely understands how to administer the questionnaire.

Any problem areas must be discussed with the interviewer before any actual screening and/ or interviewing is begun. If you have any questions, please call this office.

MAKE SURE YOU ARE FAMILIAR WITH THE SCREENER, THE QUESTIONNAIRE, THE ROTATION OF THE LOGOS IN THE DISPLAY, AND THE INSTRUCTIONS BEFORE YOU BRIEF.

Writing Implements

- Use pencil for Screeners. Because you will be erasing and re-using the Screeners, pencil is the required writing implement.
- However, for the Main Questionnaire, you MUST use only blue or black ball-point pen (do not use erasable ink pens). For the purpose of this study, Main Questionnaires not recorded in blue or black pen will be considered invalid and will not be included in the project or paid for. On the main questionnaire, cross out if necessary.

Screener And Questionnaire Administration Procedures

Asking The Questions

Interviewers should follow all directions and read all questions EXACTLY as written. Interviewers must not paraphrase a question or re-word it. Words that are underlined in a question are to be emphasized when reading the question. If, at any time, the respondent does not seem to understand something, the interviewer should not attempt to interpret the meaning, but slowly re-read the question from the screener or questionnaire, pause and wait for an answer. If the respondent still does not understand, the interviewer should just say, "Whatever you take that to mean," or "However you understand that."

Probe where indicated on the questionnaire using ONLY the probes that are provided at specific questions. DO NOT use any other probes/clarifications or probe/clarify where it is not called for. The exception to this is that interviewers may clarify spelling of any company or business names that are not familiar to them. Consistency among interviewers is essential and is possible ONLY if everyone follows these instructions.

Recording The Answers

Answers on the screener should be recorded in dark (No.2) pencil. Erasing is acceptable on the screener if a respondent is terminated for not meeting a qualification and that screener will be reused.

Answers on the main questionnaire should be recorded in black or blue ball-point pen. NO ERASURES are permitted on the questionnaire. If a recording error is made, the interviewer should draw a line through the erroneous answer; write in the correct answer and initial where the change was made. The interviewer must initial any changes made to the questionnaire.

All recording on BOTH the screener and questionnaire must be done strongly enough so they can be legibly photocopied.

Answers to close-ended questions are to be recorded by circling the number next to the appropriate answer.

Answers to open-ended questions are to be recorded in the appropriate space under the question. If more space is required to answer a question, the back of the page should be used, being sure to label answers so it is clear which question's answer is being written down.

OPEN-END ANSWERS ARE TO BE RECORDED VERBATIM THIS MEANS WRITE DOWN WHAT THE RESPONDENT SAYS JUST THE WAY THE RESPONDENT SAYS IT. WRITE IT ALL DOWN. DO NOT PARAPHRASE. DO NOT EDIT. DO NOT ERASE. THE INTERVIEWER MUST DRAW A LINE THROUGH ANY INCORRECT WORDS AND ENTER THE NEW CORRECT WORDS. ALL CHANGES MUST BE INITIALED BY THE INTERVIEWER. INTERVIEWERS SHOULD WRITE OR PRINT SLOWLY ENOUGH SO THAT THE ANSWER IS LEGIBLE.

IF YOU HAVE INTERVIEWERS WHO YOUR EXPERIENCE INDICATES CANNOT DO VERBATIM RECORDING THOROUGHLY, PLEASE DO NOT ASK THEM TO WORK ON THIS STUDY!

Penmanship counts! If we cannot read an answer, we cannot use it or the questionnaire!

Following Instructions

There are skips in the questionnaire. Be sure that interviewers are thoroughly familiar with them before starting to interview.

Respondent/Interviewer Certification Boxes

Both the respondent and the interviewer must sign in the appropriate Certification box on the last page of the questionnaire. If the respondent refuses to sign, his/her initials are acceptable.

Each interviewer is to read his/her Interviewer Instructions and sign them. Each interviewer's signed Instructions are to be stapled to his/her practice interview and returned at the end of the study.

STUDY ADMINISTRATION

Editing

All completed work must be 100% edited for 100% accuracy and completeness on a continuing basis. Editor's initials must appear on the first page of the screener and on the first page of the questionnaire. Be sure that each respondent qualifies to be interviewed and that each appropriate question has a response. In editing check for:

- o Completeness of information on the front of each screener (market, version, age/gender)
- o Verbatim capture of responses
- o Proper skip patterns
- o Legible handwriting
- o NO erasures on the Main Questionnaire

If an interviewer appears not to be following instructions exactly, please alert them to that as soon as possible and take remedial action if needed.

If any response on the questionnaire is unclear for any reason, please clarify it with the interviewer. **NO ERASURES ARE PERMITTED ON THE QUESTIONNAIRE.** The unclear or illegible words will be crossed out by the interviewer, and the correct words will be legibly written next to it by the interviewer. The interviewer must initial any changes made to the questionnaire, not the editor.

Master Quota Sheets

In this shipment you have been provided with Six Master Quota sheets. Make sure you review the Master Quota sheets. All over quota interviews will NOT be accepted.

Respondent Numbers

In this shipment is a respondent number worksheet. This form is for your use only and does not need to be returned to TRG. The numbers listed on this form are unique to your location and are the only respondent numbers you may use. No one respondent number can be assigned to more than one respondent. Additionally, the three numbers to the left of your location on the Master Quota Sheet and the three numbers to the right of your location on the front of the screener must match the first three numbers on your respondent number worksheet. When you are editing the questionnaires, make sure the correct city is circled on the front of the screener.

Quality Control Procedures

ANY WORK RECEIVED BY OUR OFFICE WHICH HAS NOT BEEN SUBJECT TO THE FOLLOWING PROCEDURES WILL BE SUBJECT TO A PAYMENT ADJUSTMENT.

Strict quality control is a primary Supervisor responsibility. Target Research Group requires that the following controls be followed:

1. This study must be screened by itself, not along with any other projects.
2. No more than one respondent per shopping group should be screened.
3. Friends, relatives or acquaintances must NOT be interviewed.
4. No one is to be in the interviewing room with the respondent, except a small child if necessary.
5. Anyone accompanying the respondent must wait for the respondent in the waiting room.
6. Interviewing should not be conducted with anyone who has a hearing, visual or English language problem.

Validation Sheets

- o List only ONE interviewer's work on a validation sheet.
- o Fill out all required respondent information, interviewer name, city and the quota groups (cell color, gender and age).
- o Be sure about indicating correct area code for every respondent.
- o Write listings in black or blue ink ONLY.
- o **Do not phone validate, since we will be independently validating 100% of every interviewer's work.**
- o You must however, monitor each interviewer's work for eligibility and completeness.
- o SEND VALIDATION SHEETS WITH EVERY SHIPMENT

Handling "No Phone" or "Refused Phone"

The Supervisor must attempt to do a telephone lookup for all respondents who do not give a phone number. If a number is not found, indicate that you have attempted to look-up by writing "L.U." on the validation form.

Daily Reporting/Transmission/Study Management

The daily report must be faxed (845-426-6890 or 845-426-1218) to my office not later than 8:30 AM ET Monday through Friday. You may find it necessary to fax the report the night before or at the end of your shift. At whatever time you need to cut off the figures to ensure the report is in my office by the designated time is fine. Make sure that you are recording the interviews and terminations accurately on the daily report, it is imperative that this information is recorded correctly.

Schedule

In this shipment is a study schedule. The schedule will outline for you the study dates AND the dates of any partial shipments of completed questionnaires. Make sure all related personnel are familiar with this schedule.

Please note that in addition to the completed materials to be returned to us upon completion of this study, all display materials must be returned to this office. Refer to Shipping Instructions and Schedule for shipping specifics.

Study Management

Please read the instructions and brief the study carefully. Prior to beginning the study if you have any questions, contact my office at 845-426-1200. As always, if during the study you should encounter any problems, call me, fax me, but let me know. Your assistance in ensuring the quality of this study is greatly appreciated.

Thank you,

Nelson Davis



TARGET RESEARCH GROUP

515 Airport Executive Park T: 845 426.1200
Manuel, New York 10954 F: 845 426.1218
www.targetresearchgroup.com

Study #06144
Outdoor Products Study
August, 2006

SUPERVISOR BRIEFING VERIFICATION FORM

Supervisor Name (Please Print): _____

Supervisor Signature: _____

Date of Briefing: _____

Company: _____

City: _____

MBM000215



Study #06144
Outdoor Products Study
August, 2006

INTERVIEWERS INSTRUCTIONS

OVERVIEW

This is a central location study to be conducted in a permanent enclosed mall facility.

You will be sight screening for males and females on the mall who are 18 years of age or older and have purchased fishing, hunting, camping or other outdoor gear in the past 12 months. Qualified respondents will be escorted back to the interviewing facility and be shown one logo individually, and then will be shown a display with 6 logos and asked a series of questions.

This is a six cell test. Each cell will see a different display.

STUDY MATERIALS

- Screeners
- Green, Blue, Yellow, White, Orange and Lilac Main Questionnaires
- Practice Interviews (Pink)
- 8 logos labeled: "L", "S", "N", "M", "H", "R", "T", "C"

Quota/Assignment

Your supervisor will assign your quota.

Overview

You were sent 8 different logos, one logo (H) is shown to the respondent first and then 6 other logos are displayed.

There are 6 cells:

- o In the GREEN, BLUE and YELLOW Cells, logo "L" will be included in the display of 6 logos.
- o In the WHITE, ORANGE and LILAC Cells, logo "S" will be included in the display of 6 logos.

While interviewing a respondent in the GREEN, BLUE and YELLOW Cells, logo "S" should be removed from the room or kept out of sight from the respondent. While interviewing a respondent in the WHITE, ORANGE and LILAC Cells, logo "L" should be removed from the room or kept out of sight from the respondent.

Logos "S" and Logos "L" are never to be shown at the same time.

SCREENER/ELIGIBILITY

Eligible respondents are males and females who are 18 years of age or more:

- QA/B: Respondent's age/gender is needed to complete a quota
- QC: Has purchased fishing gear, hunting gear, camping gear or other outdoor gear in the past 12 months.
- QD: Does not work or have anyone living in their household work in an advertising agency or public relations, in a marketing research firm, in a store or company that sells outdoor gear.
- QE: Has not participated in a survey in the past 3 months
- QF/G: Has glasses or contact lenses with them if needed.
- QH: Respondent agrees to be interviewed

MAIN QUESTIONNAIRES/ DISPLAY

Before the interview begins:

- o Be sure you have the correct logos for the display for the main questionnaire you are using.
- o All logos must be kept covered and out of sight until they are needed
- o Escort the respondent into the interviewing room and close the door.
- o Respondent should be standing at the table, facing the logos.
- o If respondent indicated that he/she wears glasses or contact lenses for reading, be sure that he/she is wearing them.
- o Only the respondent and the interviewer are to be in the interviewing room.

You have received a supply of 6 main questionnaires: Green, Blue, Yellow, White, Orange and Lilac. Each respondent will be shown one individual logo ("H"), prior to viewing the display. Each respondent will then be shown one display consisting of 6 logos (depending on the color of the questionnaire being administered.) You may complete your quota by cell color or you may vary cell color in order to better complete your quota. Continue interviewing until all versions are completed.

The display shown to the respondent prior to Question 6 on the Main Questionnaire will have a total of six (6) logos. These logos will be placed in a different order, depending on what color is being administered.

Logos labeled "T", "N", "M", "R" and "C" will be shown in ALL Cells.

The 6 logos for the display, are to be placed, in two rows, side-by-side flat on the table, left to right as they face the respondent in the order specified in the main questionnaire.

The logos should be placed face up **AND COVERED** until Q.6 of the main questionnaire.

DISPLAY SETUP

At Q.1, everyone sees logo "H".

For Q.6, the display of 6 logos is different for each of the six color questionnaires:

GREEN:	<u>R</u> <u>I</u>	<u>M</u> <u>L</u>	<u>C</u> <u>N</u>
BLUE:	<u>L</u> <u>C</u>	<u>R</u> <u>N</u>	<u>T</u> <u>M</u>
YELLOW:	<u>N</u> <u>R</u>	<u>M</u> <u>T</u>	<u>L</u> <u>C</u>
WHITE:	<u>R</u> <u>T</u>	<u>M</u> <u>S</u>	<u>C</u> <u>N</u>
ORANGE:	<u>S</u> <u>C</u>	<u>R</u> <u>N</u>	<u>T</u> <u>M</u>
LILAC:	<u>N</u> <u>R</u>	<u>M</u> <u>T</u>	<u>S</u> <u>C</u>

MAIN QUESTIONNAIRE IN DETAIL

Be sure you have the correct logos for the display for the color questionnaire you are using.

Q. 1: SHOW RESPONDENT LOGO "H". After respondent indicates they are finished looking at it, remove Logo H from sight.

Q. 2-5: Record answers. Follow appropriate skip patterns.

Q. 6: Take respondent to display area. Uncover the logo display. Be sure the logos are in the order shown on the questionnaire. Allow the respondent to look at the logos, when finished, continue.

Q. 7a: HAND CARD 7a. Read question, record one answer. If Do think (first answer), ask Q. 7b. If Don't or No Opinion, skip to Q. 8b.

Q. 7b: Record the letter of each logo mentioned on a separate line.

Q. 7c: Ask for each logo mentioned in Q. 7b. Record answer next to the corresponding logo letter.

After Q. 7c, remove any logos from the display that were mentioned in Q. 7b. If one or more logos remain, continue with Q.8a/b. If no logos remain, skip to Q. 10.

Q. 8a/b: Ask Q. 8a if any logos were removed from the display. If all 6 remain, ask Q. 8b.

Q. 8c: HAND CARD 8c. Read question, record one answer. If Do think (first answer), ask Q. 8d. If Don't or No Opinion, skip to instructions before Q. 9a.

Q. 8d: Record the letter of each logo mentioned on a separate line.

Q. 8e: Ask for each logo mentioned in Q. 8d. Record answer next to the corresponding logo letter.

After Q. 8e, remove any logos from the display that were mentioned in Q. 8d. If one or more logos remain, continue with Q.9a/b. If no logos remain, skip to Q. 10.

Q. 9a/b: Ask Q. 9a if any logos were removed from the display. If all 6 remain, ask Q. 9b.

Q. 9c: HAND CARD 9c. Read question, record one answer. If Do think (first answer), ask Q. 9d. If Don't or No Opinion, skip to Q. 10.

Q. 9d: Record the letter of each logo mentioned on a separate line.

Q. 9e: Ask for each logo mentioned in Q. 9d. Record answer next to the corresponding logo letter.

Q.10: REMOVE ALL LOGOS FROM VIEW. CONTINUE TO CERTIFICATION PAGE

Respondent/Interviewer Certification Boxes

Both the respondent and the interviewer must sign in the appropriate Certification box on the last page of the questionnaire. If the respondent refuses to sign, his/her initials are acceptable.



515 Airport Executive Park T: 845 426.1200
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www.targetresearchgroup.com

Study #06144
Target Outdoor Products Study
August, 2006

INTERVIEWER BRIEFING VERIFICATION FORM

interviewer Name (Please Print): _____

interviewer Signature: _____

Site of Briefing: _____

Company: _____

City: _____

TARGET RESEARCH GROUP INC.

To: Suzanne Edison, Field Solutions

From: Angela Ortiz

Date: August 23, 2006

Re: Validation -- Outdoor Products Study— #06144

This was a mall study. Please validate 100%. Respondents were males and females 18 years of age or older.

Eligible respondents were shown several logos.

Hello, I'm _____ from Target Research, a national market research company. I am calling to thank you for recently participating in our study in the mall. I would like to verify some information; it will only take a minute.

Q.1: Did you participate in an interview in a shopping mall where you were shown some cards with logos from stores that sell outdoor gear?

ANSWER: Yes

Q.2: Which of the following products have you purchased in the past 12 months? (**READ LIST**)

Fishing gear
Hunting gear
Camping gear
Other outdoor gear

ANSWER: Must be "Yes" to at least one of the above items

Q.3: Which of the following groups includes your age (**Read List**)?

Under 18	X	Check age against the Validation Sheet
18-44.....	1	
45 or over.....	2	

Thank you again for participating in our survey.

TARGET RESEARCH GROUP INC.
OUTDOOR PRODUCTS (#113-06144)

Appendix G

Page	Table	Title
1	1	Q. CITY
3	2	Q. A. B AGE/GENDER OF RESPONDENT
4	3	Q. D1 PRODUCTS PURCHASED PAST 12 MONTHS
5	4	Q. 2 FREQUENCY OF WATCHING TV
6	5	Q. 3 TYPE OF TV SHOWS SOMETIMES WATCH
7	6	Q. 4 TYPE OF TV SHOW WATCH MOST OFTEN
8	7	Q. 5 WHETHER TELEVISION PROGRAMS TODAY ARE BETTER, THE SAME OR NOT AS GOOD AS SEVERAL YEARS AGO
9	8	Q. 7A WHETHER THINK ONE OR MORE LOGOS ARE PUT OUT OR MADE BY THE SAME COMPANY THAT PUTS OUT THE STORE LOGO SHOWN EARLIER
10	9	Q. 7B WHICH LOGO OR LOGOS ARE PUT OUT OR MADE BY THE SAME COMPANY THAT PUTS OUT THE STORE LOGO SHOWN EARLIER
11	10	Q. 8C WHETHER THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER
12	11	Q. 8D WHICH LOGO OR LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER
13	12	Q. 9C WHETHER THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS IS AFFILIATED WITH, IS CONNECTED TO, OR IS PART OF THE COMPANY THAT PUTS OUT THE LOGOS SHOWN EARLIER
14	13	Q. 9D WHICH LOGO OR LOGOS ARE AFFILIATED WITH, CONNECTED TO, OR ARE PART OF THE COMPANY THAT PUTS OUT THE LOGOS SHOWN EARLIER

TARGET RESEARCH GROUP INC.
OUTDOOR PRODUCTS (#113-06144)

Table 1

Q.CITY

	TOTAL	SPORTS		GANDER
		WAREHS	MAN	
	-----	-----	-----	MTN.
TOTAL RESPONDENTS	396	202	194	
ATLANTA	27 6.8	14 6.9	13 6.7	
CORPUS CHRISTI	27 6.8	13 6.4	14 7.2	
DALLAS	24 6.1	13 6.4	11 5.7	
DENVER	27 6.8	15 7.4	12 6.2	
DES MOINES	27 6.8	14 6.9	13 6.7	
JACKSON	26 6.6	15 7.4	11 5.7	
LITTLETON	27 6.8	13 6.4	14 7.2	
MEMPHIS (NET)	51 12.9	24 11.9	27 13.9	
MEMPHIS (WC)	24 6.1	11 5.4	13 6.7	
MEMPHIS (FHR)	27 6.8	13 6.4	14 7.2	
NASHVILLE	26 6.6	14 6.9	12 6.2	
OKLAHOMA	27 6.8	14 6.9	13 6.7	
PHILADELPHIA (NET)	55 13.9	27 13.4	28 14.4	
PHILADELPHIA (PH)	27 6.8	13 6.4	14 7.2	

TARGET RESEARCH GROUP INC.
OUTDOOR PRODUCTS (#113-06144)

Table 1

Q. CITY

	TOTAL	SPORTS -MAN WAREHS	GANDER MTN.
	-----	-----	-----
TOTAL RESPONDENTS	396	202	194
PHILADELPHIA (CPPH)	28	14	14
	7.1	6.9	7.2
SAN ANTONIO	26	13	13
	6.6	6.4	6.7
ST. LOUIS	26	13	13
	6.6	6.4	6.7

TARGET RESEARCH GROUP INC.
OUTDOOR PRODUCTS (#113-06144)

Table 2

Q.A. B AGE/GENDER OF RESPONDENT

	TOTAL	SPORTS -MAN WAREHS	GANDER MTN.
TOTAL RESPONDENTS	396	202	194
MALE (NET)	253	129	124
	63.9	63.9	63.9
18 - 44 YEARS	104	53	51
	26.3	26.2	26.3
45 OR OVER	149	76	73
	37.6	37.6	37.6
FEMALE (NET)	143	73	70
	36.1	36.1	36.1
18 - 44 YEARS	56	29	27
	14.1	14.4	13.9
45 OR OVER	87	44	43
	22.0	21.8	22.2
TOTAL			
18 - 44 YEARS	160	82	78
	40.4	40.6	40.2
45 OR OVER	236	120	116
	59.6	59.4	59.8

Q.D1 PRODUCTS PURCHASED PAST 12 MONTHS

Table 3

	SPORTS -MAN GANDER TOTAL WAREHS MTN. -----		
TOTAL RESPONDENTS	396	202	194
PURCHASED PAST 12 MONTHS			
OUTDOOR GEAR (NET)	396	202	194
	100.0	100.0	100.0
FISHING GEAR	243	120	123
	61.4	59.4	63.4
HUNTING GEAR	118	63	55
	29.8	31.2	28.4
CAMPING GEAR	237	117	120
	59.8	57.9	61.9
OTHER OUTDOOR GEAR	295	146	149
	74.5	72.3	76.8
GOLF EQUIPMENT OR APPAREL	95	55	40
	24.0	27.2	20.6
ATHLETIC SHOES	318	156	162
	80.3	77.2	83.5
SUNGLASSES	281	139	142
	71.0	68.8	73.2

Q.2 FREQUENCY OF WATCHING TV

Table 4

	SPORTS		GANDER	
	-MAN		MTN.	
TOTAL	WAREHS			
TOTAL RESPONDENTS	396	202	194	
EVERY DAY (7)	322	166	156	
	81.3	82.2	80.4	
FIVE OR SIX TIMES A WEEK (5.5)	27	13	14	
	6.8	6.4	7.2	
THREE OR FOUR TIMES A WEEK (3.5)	32	16	16	
	8.1	7.9	8.2	
ONCE OR TWICE A WEEK (1.5)	11	5	6	
	2.8	2.5	3.1	
LESS THAN ONCE A WEEK (.5)	4	2	2	
	1.0	1.0	1.0	
MEAN: TIMES PER WEEK	6.40	6.43	6.37	
STD. DEV.	1.43	1.40	1.47	
STD. ERR.	0.072	0.099	0.105	

Q.3 TYPE OF TV SHOWS SOMETIMES WATCH

Table 5

	SPORTS		
	TOTAL	-MAN WAREHS	GANDER MTN.
TOTAL RESPONDENTS	396	202	194
MENTION SHOW TYPE (NET)			
SPORTS	395	201	194
	99.7	99.5	100.0
TALK SHOWS	283	139	144
	71.5	68.8	74.2
LOCAL NEWS	207	99	108
	52.3	49.0	55.7
NETWORK OR CABLE NEWS	317	160	157
	80.1	79.2	80.9
REALITY SHOWS	206	101	105
	52.0	50.0	54.1
SOAP OPERAS	184	88	96
	46.5	43.6	49.5
QUIZ SHOWS	83	50	33
	21.0	24.8	17.0
COMEDY SERIES	152	77	75
	38.4	38.1	38.7
DRAMA SERIES	289	146	143
	73.0	72.3	73.7
CHILDREN'S SHOWS	246	129	117
	62.1	63.9	60.3
MOVIES	103	52	51
	26.0	25.7	26.3
NONE OF THE ABOVE	301	152	149
	76.0	75.2	76.8
	1	1	0
	0.3	0.5	0

Q.4 TYPE OF TV SHOW WATCH MOST OFTEN

Table 6

	SPORTS		
	TOTAL	-MAN WAREHS	GANDER MTN.
TOTAL RESPONDENTS	396	202	194
MENTION SHOW TYPE (NET)	395	201	194
	99.7	99.5	100.0
SPORTS	79	49	30
	19.9	24.3	15.5
TALK SHOWS	14	7	7
	3.5	3.5	3.6
LOCAL NEWS	52	28	24
	13.1	13.9	12.4
NETWORK OR CABLE NEWS	30	14	16
	7.6	6.9	8.2
REALITY SHOWS	30	15	15
	7.6	7.4	7.7
SOAP OPERAS	16	11	5
	4.0	5.4	2.6
QUIZ SHOWS	7	5	2
	1.8	2.5	1.0
COMEDY SERIES	56	27	29
	14.1	13.4	14.9
DRAMA SERIES	34	17	17
	8.6	8.4	8.8
CHILDREN'S SHOWS	8	4	4
	2.0	2.0	2.1
MOVIES	78	31	47
	19.7	15.3	24.2
OTHER	1	0	1
	0.3	0	0.5
NONE OF THE ABOVE	1	1	0
	0.3	0.5	0

Q.5 WHETHER TELEVISION PROGRAMS TODAY ARE BETTER, THE SAME OR
NOT AS GOOD AS SEVERAL YEARS AGO

Table 7

	SPORTS		
	TOTAL	-MAN WAREHS	GANDER MTN.
TOTAL RESPONDENTS	396	202	194
MENTIONED SHOW TYPE	395	201	194
BETTER	99.7	99.5	100.0
	123	65	58
	31.1	32.2	29.9
ABOUT THE SAME	132	63	69
	33.3	31.2	35.6
NOT AS GOOD	138	72	66
	34.8	35.6	34.0
DON'T KNOW	2	1	1
	0.5	0.5	0.5
DID NOT MENTION SHOW TYPE	1	1	0
	0.3	0.5	0

Q. 7A WHETHER THINK ONE OR MORE LOGOS ARE PUT OUT OR MADE BY THE SAME COMPANY
THAT PUTS OUT THE STORE LOGO SHOWN EARLIER

Table 8

	SPORTS -MAN TOTAL WAREHS MTN. -----	
TOTAL RESPONDENTS	396	202
	194	
DO THINK ONE OR MORE OF THESE LOGOS IS PUT OUT OR MADE BY THE SAME COMPANY AS STORE LOGO SHOWN EARLIER	182 46.0	112 55.4
	70 36.1	
DON'T THINK ONE OR MORE OF THESE LOGOS IS PUT OUT OR MADE BY THE SAME COMPANY AS STORE LOGO SHOWN EARLIER	116 29.3	43 21.3
	73 37.6	
NO OPINION OR DON'T KNOW	98 24.7	47 23.3
	51 26.3	

Q.7B WHICH LOGO OR LOGOS ARE PUT OUT OR MADE BY THE SAME COMPANY
THAT PUTS OUT THE STORE LOGO SHOWN EARLIER

Table 9

	SPORTS -MAN GANDER WAREHS MTN. -----		
TOTAL RESPONDENTS	396	202	194
DO THINK ONE OR MORE OF THESE LOGOS IS PUT OUT OR MADE BY THE SAME COMPANY AS STORE LOGO SHOWN EARLIER	182 46.0	112 55.4	70 36.1
C - CABELA'S	64 16.2	31 15.3	33 17.0
L - SPORTSMAN'S WAREHOUSE	91 23.0	91 45.0	0
M - L.L.BEAN	22 5.6	9 4.5	13 6.7
N - SCHEELS	9 2.3	4 2.0	5 2.6
R - ACADEMY SPORTS+OUTDOORS	30 7.6	16 7.9	14 7.2
S - GANDER MTN.	19 4.8	0	19 9.8
T - DICK'S SPORTING GOODS	30 7.6	15 7.4	15 7.7
DON'T THINK ONE OR MORE OF THESE LOGOS IS PUT OUT OR MADE BY THE SAME COMPANY AS STORE LOGO SHOWN EARLIER	116 29.3	43 21.3	73 37.6
NO OPINION OR DON'T KNOW	98 24.7	47 23.3	51 26.3

Q.8C WHETHER THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS
RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY
THAT PUTS OUT THE LOGO SHOWN EARLIER

Table 10

	SPORTS	
	-MAN	GANDER
	WARENS	MTN.
TOTAL RESPONDENTS	396	202
	194	
DO THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	88 22.2	47 23.3
DON'T THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	197 49.7	102 50.5
NO OPINION OR DON'T KNOW	111 28.0	53 26.2
		58 29.9

Q.8D WHICH LOGO OR LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER

Table 11

	SPORTS -MAN GANDER TOTAL WAREHS MTN. -----		
TOTAL RESPONDENTS	396	202	194
DO THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	88 22.2	47 23.3	41 21.1
C - CABELA'S	28 7.1	16 7.9	12 6.2
L - SPORTSMAN'S WAREHOUSE	10 2.5	10 5.0	0
M - L.L.BEAN	19 4.8	10 5.0	9 4.6
N - SCHEELS	16 4.0	9 4.5	7 3.6
R - ACADEMY SPORTS+OUTDOORS	27 6.8	15 7.4	12 6.2
S - GANDER MTN.	18 4.5	0	18 9.3
T - DICK'S SPORTING GOODS	25 6.3	11 5.4	14 7.2
DON'T THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS RECEIVED OR NEEDED TO RECEIVE PERMISSION OR APPROVAL FROM THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	197 49.7	102 50.5	95 49.0
NO OPINION OR DON'T KNOW	111 28.0	53 26.2	58 29.9

0.9C WHETHER THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS IS AFFILIATED WITH, IS CONNECTED TO, OR IS PART OF THE COMPANY THAT PUTS OUT THE LOGOS SHOWN EARLIER

Table 12

	SPORTS		
	-MAN	GAMER	
TOTAL	WAREHS	MTN.	
TOTAL RESPONDENTS	396	202	194
DO THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS IS AFFILIATED WITH, IS CONNECTED TO, OR IS PART OF THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	74	36	38
	18.7	17.8	19.6
DON'T THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS IS AFFILIATED WITH, IS CONNECTED TO, OR IS PART OF THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	186	98	88
	47.0	48.5	45.4
NO OPINION OR DON'T KNOW	130	65	65
	32.8	32.2	33.5
ALL LOGOS MENTIONED (NONE LEFT)	6	3	3
	1.5	1.5	1.5

Q.9D WHICH LOGO OR LOGOS ARE AFFILIATED WITH, CONNECTED TO, OR ARE PART OF THE COMPANY THAT PUTS OUT THE LOGOS SHOWN EARLIER

Table 13

	SPORTS -MAN TOTAL WAREHS -----			GANDER -MAN MTN. -----		
TOTAL RESPONDENTS	396	202	194			
DO THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS IS AFFILIATED WITH, IS CONNECTED TO, OR IS PART OF THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	74	36	38			
	18.7	17.8	19.6			
C - CABELA'S	24	12	12			
	6.1	5.9	6.2			
L - SPORTSMAN'S WAREHOUSE	9	9	0			
	2.3	4.5	0			
M - L.L.BEAN	13	7	6			
	3.3	3.5	3.1			
N - SCHEELS	7	1	6			
	1.8	0.5	3.1			
R - ACADEMY SPORTS+OUTDOORS	13	3	10			
	3.3	1.5	5.2			
S - GANDER MTN.	10	0	10			
	2.5	0	5.2			
T - DICK'S SPORTING GOODS	20	13	7			
	5.1	6.4	3.6			
DON'T THINK ONE OR MORE OF THE COMPANIES THAT PUT OUT THESE LOGOS IS AFFILIATED WITH, IS CONNECTED TO, OR IS PART OF THE COMPANY THAT PUTS OUT THE LOGO SHOWN EARLIER	186	98	88			
	47.0	48.5	45.4			
NO OPINION OR DON'T KNOW	130	65	65			
	32.8	32.2	33.5			
ALL LOGOS MENTIONED (NONE LEFT)	6	3	3			
	1.5	1.5	1.5			

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration
No. 2,390,988
For the Mark SPORTSMAN'S WAREHOUSE HUNTING
FISHING CAMPING RELOADING OUTERWARE FOOTWARE
and DESIGN
Date registered: October 3, 2000

COPY

Bass Pro Trademarks, L.L.C.,
Petitioner,
vs. Cancellation No.
Sportsman's Warehouse, Inc., 92045000
Registrant

Deposition of Michael B. Mazis, Ph.D.
Washington, D.C.
December 1, 2006

Reported by: Bonnie L. Russo

JOB NO. 178108

1 P R O C E E D I N G S

2 MICHAEL B. MAZIS, Ph.D.,

3 was called for examination by counsel and,
4 after having been duly sworn by the Notary, was
5 examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR PETITIONER

7 BY MR. UPCHURCH:

8 Q. Dr. Mazis, would you state your full
9 name for the record, please.

10 A. Michael Bernard Mazis.

11 Q. And where do you currently work,
12 sir?

13 A. I'm a professor of marketing in the
14 school of business at American University in
15 Washington, D.C..

16 Q. Okay. Have you been asked to
17 conduct a survey directed to whether a
18 likelihood of confusion exists between Bass Pro
19 Shops sportsman's warehouse logo and the logo
20 used by the registrant, Sportsman's Warehouse?

21 A. Yes, I have.

1 Q. Could you briefly describe your
2 educational background?

3 A. I have a BS degree in economics from
4 the University of Pennsylvania. I have an MBA
5 degree from New York University and a Ph.D.
6 degree in business administration with a
7 concentration in marketing from Pennsylvania
8 State University.

9 Q. Okay. And when was that last
10 degree, sir?

11 A. 1971.

12 Q. Could you briefly describe your
13 professional experience?

14 A. I have been a professor for over 30
15 years at the University of Florida and American
16 University and -- but I have also worked in
17 marketing research for Warner Lambert
18 pharmaceutical company. That was between my
19 MBA and Ph.D. degrees and then I also worked
20 for the government for three years at the Food
21 and Drug Administration and at the Federal

1 Trade Commission.

2 Q. Okay. And briefly, what were you
3 doing for the Federal Trade Commission and the
4 Food and Drug Administration?

5 A. I evaluated consumer perception of
6 advertising and product labels. I designed and
7 conducted marketing research surveys and I also
8 evaluated surveys submitted by companies that
9 were seeking to substantiate their promotional
10 claims.

11 Q. Could you tell me a little bit about
12 the courses that you have taught as a
13 professor?

14 A. I have taught marketing management,
15 principles of marketing, consumer behavior,
16 course in public policy in marketing, marketing
17 research, those are the ones I can think of
18 right now.

19 Q. Have you authored or co-authored any
20 published books or articles on the topics of
21 marketing and/or advertising?

1 A. Yes. I have over 60 peer review
2 publications and I was also a co-editor on a
3 book on product labeling.

4 Q. Prior to your involvement in the
5 current matter, have you been asked to perform
6 surveys relating to trademark dispute?

7 A. Yes, a number of times.

8 Q. Approximately how many trademark
9 surveys have you conducted, sir?

10 A. I would say at least 25.

11 Q. Prior to the present case, have you
12 conducted any trademark surveys for or on
13 behalf of Bass Pro Shops?

14 A. No, I haven't.

15 Q. Prior to your involvement in the
16 present case, have you done any work,
17 whatsoever, for or on behalf of Bass Pro Shops?

18 A. No, I haven't.

19 Q. Prior to this present engagement,
20 have I or the firm of Husch & Eppenberger
21 retained you in any matter?

1 A. No.

2 Q. Have you done any work prior to this
3 matter for or on behalf of the registrants,
4 Sportsman's Warehouse?

5 A. No, I haven't.

6 Q. And what is your hourly rate for
7 your services in this present matter?

8 A. \$500 per hour.

9 Q. And what have you been asked to do
10 in this case?

11 A. I was asked to conduct a survey to
12 determine likelihood of confusion between the
13 Bass Pros Sportsman's Warehouse mark and the
14 Sportsman's Warehouse mark.

15 Q. Did you, in fact, conduct such a
16 survey?

17 A. Yes, I did.

18 Q. Are you familiar with the parties in
19 this case and their respective businesses?

20 A. Yes.

21 Q. Okay. And how did you become

1 you prepared a report?

2 A. Yes.

3 MR. UPCHURCH: Would you hand
4 Exhibit 3 to the witness, please.

5 (Deposition Exhibit No. 3 was marked
6 for identification.)

7 BY MR. UPCHURCH:

8 Q. Dr. Mazis, you have been handed
9 what's been identified as Exhibit 3.

10 Can you identify that?

11 A. It's my expert report in this
12 matter.

13 Q. What does your report contain, sir?

14 A. It contains my description of all
15 the procedures that I followed, the
16 methodology, the results and also there is a
17 number of appendices including my CV and the
18 screening and main questionnaires, the logos
19 used in this survey, the supervisor and
20 interviewer instructions, the validation
21 questionnaire, and the tabulations.

1 MR. UPCHURCH: Could you also hand
2 the witness Exhibit 4, please.

3 (Deposition Exhibit No. 4 was marked
4 for identification.)

5 BY MR. UPCHURCH:

6 Q. Dr. Mazis, can you identify Exhibit
7 4 for me?

8 A. Exhibit 4 is a diagram that
9 indicates the research design that I used.

10 Q. Okay. When you say, "the research
11 design," what do you mean by that?

12 A. The procedure that was used in the
13 survey.

14 Q. When you say, "procedure," is that
15 the same thing or similar to methodology?

16 A. Yes. At least this is part of the
17 methodology.

18 Q. Could you describe the basic
19 methodology of your survey?

20 A. Well, the basic methodology is,
21 first, potential respondents were interviewed

1 in a number of shopping malls around the
2 country, there were actually 15 shopping malls,
3 and they were interviewed between August 18th
4 and August 29th, 2006.

5 There were interviewers out in the
6 malls that were screening people to make sure
7 that we had the relevant population for this
8 survey and people had to meet certain
9 qualifications. They had to be at least 18
10 years of age. They had to in the last 12
11 months have purchased fishing, hunting, camping
12 or other outdoor gear, and they were excluded
13 if, for example, they didn't have their
14 eyeglasses with them or if they worked in some
15 sensitive industry like marketing research, for
16 example, that would give them some specialized
17 knowledge. And once they qualified for the
18 survey they were invited to participate and
19 then they were -- they went to a facility in
20 the mall where the interview was conducted.

21 You want me to just continue?

1 Q. Well, let's back up just a little
2 because you said quite a bit there. Exhibit 4,
3 which you have in front of you, consists of two
4 pages.

5 What's the significance of the two
6 pages with respect to how the survey was
7 conducted?

8 A. Well, I didn't quite get to that,
9 but I would be happy to answer your question.

10 Once people came into the survey
11 facility they were randomly assigned to one of
12 two groups. And one group is called the test
13 group and the other group is called the control
14 group. And the procedure of -- just to make it
15 quite simple here people were shown the Bass
16 Pro Shops Sportsman's Warehouse logo first.
17 People in both groups saw that logo. And they
18 were -- once they saw that logo they -- the
19 interviewer read a statement to them which
20 said, "On the table in front of you is a logo
21 that is associated with a certain store. You

1 may or may not be familiar with this logo or
2 the store. I would like you to look at this
3 store logo the way you would if you were
4 considering buying some products from the
5 store. Take as long as you normally would to
6 examine the logo." Then people looked at the
7 logo. It was on a card and they could look at
8 it for as long as they wanted to. Then the
9 logo is removed from sight. So that's step one
10 in the design.

11 Then step 2 there were a set of
12 distractor questions that were asked people
13 mainly to separate the first exposure of the
14 logo to the array that happened later in the
15 questionnaire. So trying to simulate what
16 might happen in the real world.

17 This design is commonly referred to
18 as a squirt design. It's described in some
19 detail in Thomas McCarthy's treatise. And the
20 distractor questions were as follows: "About
21 how often do you watch television? Which of

1 the following TV shows do you sometimes watch?"
2 A list was read to them. "And which one type
3 of TV show do you watch most often? And do you
4 think that television programs today are
5 better, about the same or not as good as the
6 programs that were on the air several years
7 ago?" Then --

8 Q. During the time you were asking
9 these distractor questions, did they still have
10 the Bass Pro logo in front of them?

11 A. No. As I said earlier, it was
12 removed from sight.

13 Q. Okay.

14 A. And then -- so then the first step
15 is they see the Bass Pro Sportsman's shops
16 warehouse logo. Step two they were asked the
17 distractor questions and then they were taken
18 over to a display area in another part of the
19 facility and there were an array of six logos
20 in front of them.

21 Now, this is where there are

1 differences between the two groups. All the
2 respondents saw five of the six logos. They
3 were L.L. Bean, Academy, Cabela's, Dick's
4 Sporting Goods and Scheels.

5 The difference --

6 Q. Can you hold on just a second?

7 MR. UPCHURCH: Do we still have
8 the -- our Minnesota contingent?

9 MR. ALLGEYER: We are still here.

10 MR. UPCHURCH: Okay. Because I
11 heard a beep.

12 MR. ALLGEYER: I heard a beep but I
13 have no idea what that is.

14 MR. UPCHURCH: All right.

15 BY MR. UPCHURCH:

16 Q. I'm sorry, Dr. Mazis, would you
17 please continue?

18 A. Yes. So in both groups they saw
19 five of the six logos that were the same. The
20 difference between the two groups is in the
21 test group there was the Sportsman's Warehouse

1 logo was the sixth one and in the control group
2 the sixth one was the Gander Mountain logo.
3 And that's really the difference between the
4 two groups.

5 The Gander Mountain served as a
6 control for the Sportsman's Warehouse logo, and
7 then once those logos were uncovered
8 respondents were basically asked three sets of
9 questions. One set of questions was, which of
10 the logos in front of you do you think is put
11 out by the same company that puts out the logo
12 that I showed you earlier? I'm just
13 shortcutting that. There were more questions
14 but that's kind of the key question there.

15 So the first one is -- has to do
16 with whether they think it was put out -- any
17 of these logos were put out by the same
18 company, and then at the second step then they
19 were asked, you know, as I said, which logos
20 they felt were put out by the same company.
21 And then the second step was they were asked

1 once the logos that they identified in the
2 first step were removed.

3 So in other words, if they had said
4 Sportsman's Warehouse on the first set of
5 questions that would then be removed from the
6 array and then on the logos that were left in
7 the array, that they hadn't mentioned in the
8 first question, they were asked which logo or
9 logos were put out by companies that received
10 or needed to receive permission or approval
11 from the company that put out the logo they had
12 seen earlier? The logo they had seen earlier,
13 of course, was the Bass Pro Sportsman Warehouse
14 logo, and then they were asked why they
15 selected that.

16 And then finally the third step,
17 again, the logos that they had mentioned were
18 removed from the array and then respondents
19 were asked whether one or more companies that
20 put out the remaining logos in the array is
21 affiliated with, is connected to or is part of

1 the company that put out the logo shown
2 earlier. Again, the one shown earlier was the
3 Bass Pro Shop Sportsman's Warehouse and then
4 indicate which were those logos that they
5 thought were affiliated or connected and then
6 why they felt that way.

7 So there's basically these three
8 steps. First they see the Bass Pro Sportsman's
9 Warehouse logo. Then they see the distractor
10 questions. Then they're exposed to the array.
11 And once they're exposed to the array there are
12 these three sets of questions. One deals with
13 whether any of these they thought were put out
14 by the same company that put out the Bass Pro
15 Shops Sportsman's Warehouse logo, whether they
16 thought it needed -- any of these needed
17 permission or approval; and finally, whether
18 they thought there was any affiliation or
19 connection between the company that put out the
20 logo in front of them and the Bass Pro Shop
21 Sportsman's Warehouse logo.

1 Q. Would this survey be referred to as
2 a mall intercept survey?

3 A. Yes, it would be. That's the
4 traditional way that these types of surveys are
5 conducted when people need to see some
6 stimulus. Usually in most cases they are done
7 in shopping malls.

8 Q. Okay. Are there other types of
9 surveys?

10 A. Yes. I mean, for example, there is
11 telephone survey, which wouldn't be appropriate
12 here because people couldn't see logos over the
13 telephone. One could use a mail survey which
14 tend not to be used that often just because
15 it's hard to get people to respond and you
16 don't really have control over their viewing of
17 the stimuli. Could use an Internet survey.
18 That's another possibility. Of course, you're
19 limited in that case to only people who are
20 online, so you eliminate a big chunk of the
21 population that way. But, you know, I have

1 conducted surveys using all these
2 methodologies.

3 Q. Okay. But this particular one was a
4 mall intercept survey?

5 A. Yes, it was. An in-person survey
6 where people were intercepted in shopping
7 malls.

8 Q. Okay. Do you recall in what cities
9 the survey was conducted?

10 And it's not a memory test. Is
11 there somewhere where we can determine the
12 cities in which the survey was conducted?

13 A. It's on the documents here. Let's
14 see. Where is the easiest way?

15 If you look at the -- in my report
16 the document labeled MBM000141 it lists all the
17 cities in which the survey was conducted.

18 Q. And when you say your report, that's
19 Exhibit 3?

20 A. Yes.

21 Q. Why did you select these particular

1 cities?

2 A. They were selected because I picked
3 states in which there was both a Bass Pro Shop
4 and a Sportsman's Warehouse -- I mean -- yes,
5 Bass Pro Shops location and a Sportsman's
6 Warehouse location and I think most of those
7 were included for that reason.

8 And then there were two locations in
9 which there was a Bass Pro Shop Sportsman's
10 Warehouse location and one had actually -- I
11 think, previously was a Bass Pro Sportsman's
12 Warehouse location. The other was currently.
13 So I wanted to make sure that at least there
14 was some reasonable possibility that the people
15 in the survey might have seen either the
16 Sportsman's Warehouse logo or the Bass Pro
17 Shops Sportsman's Warehouse logo.

18 Q. Okay. Did you personally
19 participate in conducting the survey or
20 interviewing the respondents?

21 A. No. I hire an outside firm. It was

1 Target Research Group. I have worked with them
2 on many surveys and so they were the ones
3 actually in charge of supervising the field
4 work. Of course, I oversaw everything that
5 they did, all their work. Anything that they
6 did, any instructions and so on were approved
7 by me.

8 Q. Is that your general practice not to
9 personally participate in conducting the
10 survey?

11 A. Yes. I actually think it would be a
12 problem if I actually did the interviewing,
13 obviously. I'm not blind to the purposes of
14 the survey. I think you want to have the
15 survey done by unbiased individuals.

16 Q. Okay. How were the individual
17 respondents selected for this survey?

18 A. They were just selected as they
19 came -- you know, as they were seen in the
20 malls. So it was, you know, more or less a
21 random basis.

1 Q. Okay. And I think you referred
2 earlier to various criteria you used for the
3 selection?

4 A. Right.

5 Q. Okay. Why did you use those
6 particular criteria?

7 A. Just based on my knowledge of this
8 case, they seem to be criteria that would
9 qualify people to be in the target audience
10 that would be exposed to these logos.

11 Q. Probably to make the record clear,
12 could you go over those criteria again briefly
13 so we have it all in one place?

14 A. Okay. Probably the best thing to do
15 is for me to refer you to the screener which is
16 Appendix B in Exhibit 3. The Bates number on
17 that is MBM000138.

18 Q. And those screener questions
19 incorporate the criteria?

20 A. Right. You know, if you turn to the
21 second page you can see it says -- asks, "Have

1 you purchased any of the following products in
2 the last 12 months?" They needed to say yes to
3 either fishing gear, hunting gear, camping gear
4 or other outdoor gear.

5 Then the next question, question D,
6 you can see that they were eliminated if they
7 worked for an advertising agency, a public
8 relations firm, a marketing research firm or a
9 store that sells outdoor gear. And then they
10 were also eliminated based on question E, "Have
11 you participated in any marketing research
12 survey other than a political pole in the last
13 three months?"

14 And then finally, there are a couple
15 of questions to make sure that they have their
16 corrective eye wear with them before they
17 participate. Obviously they needed to see the
18 logos so we wanted to make sure that they had
19 adequate visual acuity.

20 Q. Okay. And I believe you said that
21 you separated the respondents into a test group

1 and a control group; is that correct?

2 A. Yes.

3 Q. Why did you utilize a control group?

4 A. Well, the purpose of the control
5 group is to control for what's called noise.
6 If you don't have a control group -- let me put
7 it this way -- then people could be guessing
8 certain answers and you don't have any way of
9 calibrating what proportion of those people
10 were guessing.

11 So the purpose of the control group
12 is to adjust for the possibility that people
13 were just guessing or also it's a way of making
14 sure that it isn't the question wording somehow
15 that's biasing them and causing the result,
16 because both the test group and the control
17 group both get the same wording.

18 So these are factors that we refer
19 to as noise or extraneous factors that can
20 effect the results and we want to try to
21 control or eliminate those extraneous factors.

1 That's why there is a control group used. In
2 just about all trademark surveys there is a
3 control group that's used to control for this
4 noise factor.

5 Q. Okay. Is there a reason that you
6 picked the Gander Mountain logo for
7 presentation to the control group?

8 A. Yes. I gave quite a bit of thought
9 to that. There were a few reasons. One, the
10 Gander Mountain and the Sportsman's Warehouse
11 seem to be about equal in terms of familiarity.
12 Actually, based on the Winkleman survey those
13 were mentioned about in equal prevalence.

14 So in other words, I wouldn't want
15 to use L.L. Bean as a control because that's
16 very well known. People might be guessing that
17 one more. So Gander Mountain was only modestly
18 known and Sportsman's Warehouse was only
19 modestly known. So that was one issue.

20 The second issue is, you know, I try
21 to match these as much as I could. Of course,

1 you can't match them perfectly, but they both
2 had two words Gander Mountain and Sportsman's
3 Warehouse. So they were similar in that way.
4 And then Gander Mountain, of course, refers to
5 a mountain and Sportsman's Warehouse has a
6 picture of a mountain. So in that sense the
7 two logos were somewhat similar in that regard.

8 So those were the reasons I thought
9 of all the logos that I considered that I could
10 get ahold of, Gander Mountain, to me, was the
11 best.

12 Q. Okay. You made a reference to a
13 Winkleman survey. What is that, sir?

14 A. That was a survey that was conducted
15 on behalf of the Sportsman's Warehouse that I
16 think has been introduced in this proceeding or
17 is about to be introduced.

18 Q. Okay. So that was on behalf of
19 Sportsman's Warehouse?

20 A. Yes.

21 Q. I'm going to ask you a question

1 about surveys in general. Is quality control
2 an issue in the taking of surveys?

3 A. Yes, it is. It's a very important
4 issue.

5 Q. Why do you say that?

6 A. Well, one of the reasons is the
7 concern that interviewers are out there in
8 shopping malls even though their supervisors.
9 One of the things you are concerned about is --
10 is whether they're actually conducting the
11 interviews or whether they're faking them.
12 So -- I mean, it doesn't happen that often that
13 they fake them, but I certainly have had in
14 situations where some interviews I believe were
15 faked. Of course, I eliminated those once I
16 discovered that. But -- so that's one
17 possibility.

18 Another possibility is -- is
19 sometimes the interviewers, even though they
20 were instructed very carefully, might not
21 follow the instructions properly. So it's

1 really important to go through an editing
2 process so that any respondents who -- or any
3 interviews that weren't conducted properly,
4 they need to be eliminated from the database.
5 So that's part of the quality control process.

6 Q. To your knowledge, were any of the
7 surveys faked in this particular case?

8 A. No. We didn't find any
9 circumstance. The process is what's called
10 validation. Once the interview is complete the
11 interviewer gets the phone number from the
12 respondent and then an independent service
13 calls the people back to make sure they
14 actually participated. And of course, you
15 can't possibility reach every single person.
16 But in this case they were may able to reach 77
17 percent of the people, which is far above the
18 sort of recommended percentage of 50 percent.
19 So the vast majority of these people actually
20 indicated that they did participate in the
21 survey, so that's -- you know, we didn't find

1 anybody who said they didn't participate.

2 You also look for patterns across
3 shopping malls. You know, you look to see
4 whether -- you know, are there substantially
5 lower validation percentages in certain malls
6 which might give you pause to wonder if
7 something is wrong, but we didn't find that. I
8 checked across all the malls. The validation
9 percentages were pretty similar across all
10 those malls.

11 Q. Okay. Other than validation, did
12 you take any steps to ensure the quality of
13 this survey?

14 A. Yes. Yes, I did.

15 What -- during the editing phase
16 where each questionnaire is looked at carefully
17 to make sure that people followed the
18 instructions, we found that 12 respondents
19 needed to be removed from the database because
20 it appeared that the questions or the
21 procedures weren't followed properly.

1 One of the most common things was
2 that it appeared that the wrong logos were
3 shown to the people. In other words, people
4 were supposed to be in the test cell and you
5 could tell from the pattern of the responses
6 that they were giving responses that made it
7 appear that they were actually in the control
8 cell where they shouldn't have been. I mean,
9 there were only 12 of them. It wasn't, you
10 know, a big number. But those 12 interviews
11 were removed from the database during the
12 editing phase.

13 Q. Okay. And is that editing commonly
14 done with surveys?

15 A. Yes. Well, it should be. I mean,
16 it should always be done. It's an important
17 quality control procedure.

18 Q. What could cause one of these
19 responses that appear to be -- appear to
20 require editing?

21 A. Well, for example, if the

1 respondent -- the way this works is there's
2 different colors, different colored
3 questionnaires. And so if the respondent is,
4 let's say, given a certain questionnaire and by
5 the color of the questionnaire that person is
6 supposed to be in the control group. By being
7 in the control group they're supposed to see
8 the Gander Mountain logo as part of the array
9 but yet when you see the -- they report what
10 logos they think are put out by the same
11 company, all of a sudden you see a response
12 that indicates a Gander Mountain -- I mean, a
13 Sportsman's Warehouse response, then you know
14 that they were in the wrong group. I mean,
15 they were shown the wrong array.

16 Q. Did you do the editing yourself?

17 A. No, I didn't. Target Research Group
18 did that and they do an excellent job of this
19 editing process.

20 Q. Did you do the validation yourself?

21 A. No. An independent firm called

1 Field Solutions that's not connected with
2 Target Research Group did the validation.

3 Q. I believe you said that 70 some
4 percent of the respondents were validated?

5 A. Yes, 77 percent.

6 Q. Did you give any instructions as to
7 how many of the respondents you wanted
8 validated?

9 A. At least 50 percent.

10 Could I take just a brief break?

11 Q. Sure.

12 (A short recess was taken.)

13 BY MR. UPCHURCH:

14 Q. Sir, do you know if the independent
15 validation firm attempted to contact all of the
16 respondents?

17 A. Yes, it did.

18 Q. What were the results of your
19 survey?

20 A. Well, I have basically organized the
21 results in three levels. At the first level,

1 the Bass Pro Shops Sportsman's Warehouse logo.
2 So that's the first --

3 Q. I'm sorry. Are these results found
4 somewhere in Exhibit 3?

5 A. Yes. You can see those on -- at the
6 bottom of Page 12 and the top of Page 13.

7 Q. Okay. And I'm sorry I interrupted
8 you. You were going to go ahead and say
9 something else?

10 A. I was just going to say that at the
11 first level here about whether they thought
12 that the two logos were put out by the same
13 company, the percentage there of likelihood of
14 confusion was 35 percent. Adjusting for the
15 control cell.

16 Q. Okay. And as I recall, you
17 testified there were several levels to the
18 survey?

19 A. Right. And the second and third
20 levels I just basically put those together,
21 which level 2 dealt with permission or approval

1 Bass Pro Shops Sportsman's Warehouse logo. So
2 you've got 54 percent in the test cell and in
3 the control cell you had 24 percent mention the
4 Gander Mountain logo.

5 So following the same process you
6 would take 54 percent in the test cell minus
7 the 24 percent in the control cell or 30
8 percent, which is after the three levels are
9 looked at, 30 percent were likely confused
10 about the source or the relationship between
11 the company that puts out the Sportsman's
12 Warehouse logo and the company that puts out
13 the Bass Pro Shop Sportsman's Warehouse logo.

14 And then there was a third type of
15 analysis I looked at which was to look at the
16 comments where people indicated why they
17 indicated the Sportsman's Warehouse logo was
18 either put out, needed permission or approval
19 or is affiliated with a company that put out
20 the Bass Pro Shops Sportsman's logo, and there
21 I -- just to make this simple, I only looked at

1 30 percent figure?

2 A. Right. We got a 30 percent figure
3 when you looked at the three levels combined;
4 puts out, needed permission or affiliated.

5 Q. Okay. So there's some overlap
6 between that 35 percent figure and the 30
7 percent figure?

8 A. Yes. The 35 percent was only after
9 the first level. The 30 percent considers
10 levels 1, 2 and 3.

11 Q. Okay. What significance do you
12 place on those particular percentages?

13 A. Well, compared to other surveys that
14 I have done in other opinions I have read, 30
15 percent is considered a substantial likelihood
16 of confusion.

17 Q. So is that expert your opinion that
18 the results of this survey indicate that there
19 is a likelihood of confusion?

20 A. Yes.

21 Q. Do you believe that this survey was

Johnny Morris



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PETITIONER

EXHIBIT 10

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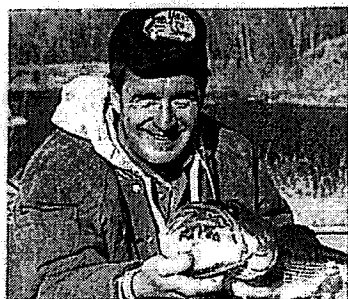
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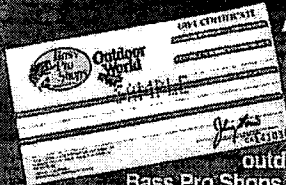
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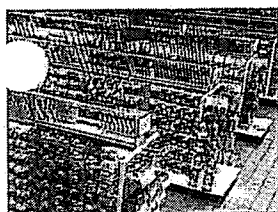
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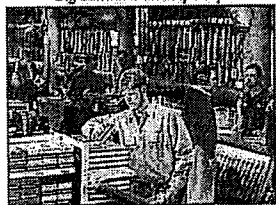


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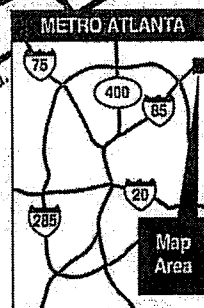
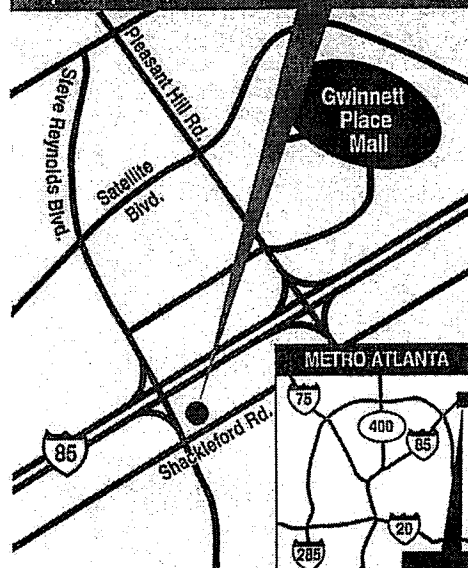
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark Registration No. 2,390,988

For the mark SPORTSMAN'S WAREHOUSE HUNTING FISHING CAMPING RELOADING
OUTERWEAR FOOTWEAR and Design

Date registered: October 3, 2000

Bass Pro Trademarks, L.L.C

v.

Sportsman's Warehouse, Inc.

PETITION TO CANCEL

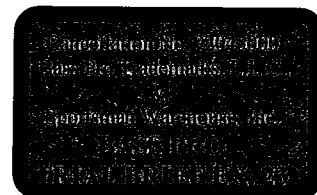
Petitioner is BASS PRO TRADEMARKS, L.L.C., a Limited Liability Company organized and existing under the laws of Missouri, located and doing business at 2500 E. Kearney, Springfield, Missouri 65898.

To the best of petitioner's knowledge, the name and address of the current owner of the registration are as follows: Sportsman's Warehouse, Inc. (Utah Corporation), 7035 High Tech Drive, Midvale, Utah 84047.

The above-identified petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark Registration No. 2071417 for the mark BASS PRO SHOPS SPORTSMAN'S WAREHOUSE and Design which was registered on the Principal Register on June 17, 1997. Said registration was based on an application filed in the



U.S. Patent Office on March 1, 1996, which is a date prior to the date of filing of respondent's application. Said registered mark of petitioner is valid and subsisting and is prima facie evidence of petitioner's exclusive right to use said mark in commerce on the services specified in said registration, namely "retail stores featuring clothing, fishing supplies and sporting goods." In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles petitioner's registered mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

2. Respondent's registered mark, when used in connection with the services of respondent, is comprised of a background design and terms that are merely descriptive of the services being provided and that are insufficiently stylized to be inherently distinctive to consumers in the markets served by respondent.

3. Respondent's registered mark, when used in connection with the services of respondent, is comprised of a common background design and terms that are merely descriptive of the services being provided and that are stylized in a common format (western/frontier) that fails to create a separate and distinct impression necessary for a mark in the markets served by respondent.

4. Since at least as early as January 2, 1995, Petitioner has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said use was begun on a date prior to the date of filing of respondent's application. Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through

substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

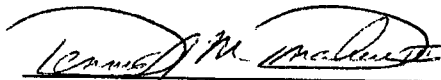
5. Since at least as early as January 2, 1995, Petitioner has been using the mark SPORTSMAN'S WAREHOUSE in connection with retail store services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said use was begun on a date prior to the actual date of first use of the respondent's registered mark and prior to the respondent's claimed date of first use. (Upon information and belief, Petitioner further alleges that respondent's actual date of first use of the registered mark was after the date set forth in the application.) Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

WHEREFORE, Petitioner prays that Registration No. 2,390,988 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints Dennis J.M. Donahue III, Michael D. Bokermann, Rebecca J. Brandau, Dutro E. Campbell II, David A. Chambers, Robert C. Haldiman, Grant D. Kang, Ryan Mitchem, Harry B. Ray, H. Frederick Rusche, and Gregory E. Upchurch of the firm Husch &

Eppenberger, LLC, to act as attorneys for Petitioner herein, with full power to prosecute said
Petition and to transact all relevant business with the U.S. Patent and Trademark Office and the
United States Courts. **Dennis J.M. Donahue III** is hereby authorized to receive all official
communications in connection with this Petition for Cancellation.

Respectfully submitted, this 30th day of September, 2005.



Dennis J.M. Donahue III
Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St Louis, MO 63105
Phone 314-480-1642
Fax 314-290-5342
E-mail trademark@husch.com